

THE EXECUTION CONTROL OF PUBLIC CONTRACTS IN CAMEROON

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ABSTRACT

Decree N°. 2018/366 of 20 June 2018 on the Public Procurement Code strengthens the monitoring of the execution of public contracts in Cameroon. This reform, while forming part of the improvement of the public procurement sector, comes at a time when the Cameroonian state is committed to the work of emergence. The emphasis is now on efficiency and effectiveness in the execution of public contracts. To this end, the supervision of the performance of public contracts is being strengthened in two ways: on the one hand, there is a strengthening of the rules and, on the other, there is an institutional strengthening. In the legislative strengthening of the control of the execution of public contracts, both quality control and quantity control are provided for. The purpose of these two control arrangements is to ensure that public contracts are properly and properly performed by taking actual and current account of the contract performance process. With regard to the institutional strengthening of the supervision of the execution of public contracts, there is not only an increase in the number of bodies responsible for supervising the execution of public contracts, but also an increase in their powers. It is in this sense that experts must be part of the supervisory bodies, including the Public Procurement Authority, whose competences are very specific. The power of sanction granted to the Public Procurement Authority is a fundamental illustration.

Keywords: The execution control, Public contracts, Expert, Public Procurement Authority

INTRODUCTION

In the first years of independence and until October 1970, Cameroon applied a regulation of Public Procurement resulting from the French regulation, in particular Decree No. 59/144 of 14 August 1959. This period is marked by the decentralized system of public procurement for the benefit of the various contractors. From the 1970s a major reform took placeⁱ, resulting in a new regulation, always inspired by the French regulation and above all, from 1978 by the desire to centralize the management of public contracts with the Central Directorate of marketsⁱⁱ. This Directorate operated until 25 August 1984, when its responsibilities were officially transferred to the Ministry of Information Technology and public procurementⁱⁱⁱ. This arrangement was again amended by two important decrees of 1986 and 1987^{iv}. The organization described above functioned officially until the decree establishing and attributing the General Directorate of Grand works of Cameroon (DGTC)^v. The creation of the DGTC was a response to the reaffirmation of the desire to centralize the management of public procurement, along the lines of the Ivorian model. In its creation, the DGTC was provided with truly exorbitant opportunities and resources that contributed to the marginalization of the building blocks, thus creating a strong hostility within government departments and administrations.

The 1957 reform reflected a decentralized organization that gave construction managers considerable room for manoeuvre. But this autonomy has not been sufficiently framed by tight controls which normally characterise decentralised systems. The first response to this limit was the creation of a Public Procurement Regulatory Agency in 2001^{vi}. The second response is given by the reform resulting from Decree No. 2004/275 of 24 December 2004 on the public procurement code, which places particular emphasis on the role of Public Procurement control and regulatory bodies. Moreover, the Cameroonian Public Procurement Code reflects a desire for efficiency that is justified through two elements: the requirement of protection and the need to guide.

A new organisation of public procurement was launched in 2012. The 08 March 2012 the president of the Republic of Cameroon signs three important decrees that bring profound changes in the public procurement sector in Cameroon. The first decree establishes, organizes and operates public procurement commissions^{vii}. The second decree concerns the organization of the Ministry of Public Procurement^{viii}. The third decree deals with the creation, organisation

and functioning of the Public Procurement Regulatory Agency^{ix}. After several reforms of the Code of Public Procurement in Cameroon, the president of the Republic of Cameroon publishes a decree on the code of Public Procurement^x. This new code is full of renovating elements such as expertise in the control of the execution of public contracts, the search for efficiency in the control of the execution of public contracts, the intervention of the minister responsible for public contracts in the control of execution. This study makes it possible within the scientific framework to respect the degree of control procedures for the performance of public contracts. It is important to note that, the administration must choose the best offer, but also the company qualified for the execution of public contracts in Cameroon^{xi}.

The development of the state depends on its system of Public Procurement, which is why the emphasis must be on monitoring the execution of public procurement in order to achieve good state construction^{xii}. It must therefore be said that public procurement occupies a prominent place in the execution of Public Procurement in Cameroon. The legal problem raised by our theme is that of improving the control of the execution of public contracts in Cameroon. Hence the question: How is the control of the execution of public contracts framed in Cameroon under the decree of 2018? To carry out our research, the two main articulations of our work will focus on the normative strengthening of the control of the execution of public contracts (I) and on the institutional strengthening of the control of the execution of public contracts in Cameroon (II).

THE NORMATIVE STRENGTHENING OF THE EXECUTION CONTROL OF PUBLIC CONTRACTS IN CAMEROON

The 2018 Public Procurement Reform^{xiii} strengthens the control of the execution of Public Procurement in Cameroon^{xiv}. The provisions of the new code continue to advocate for improved control of the performance of public contracts. It should be emphasized that, the intervention of MINMAP through the control on the ground and the pre-payment visa has made it possible to avoid in recent years undue bleeding from the public fortune valued at tens of billions of CFA francs. As an area of concern to the public authorities^{xv}, public contracts deserve more than in the past that they give a favourable view of the execution of the various

contracts throughout the territory in order to receive the services well executed. Quality approaches are not unknown in the field of Public Procurement^{xvi}.

Thus, the normative reinforcement of the control of the execution of public contracts is assessed through qualitative Control (A) and through quantitative control (B).

The quality control of the performance of public contracts

"We cannot define quality, we recognize it when we see it"^{xvii}, this statement thus put highlights the existing difficulty in defining quality. Today this search for quality reflects an idea of guarantee. The quest for quality is therefore an additional burden for the public person^{xviii}. For a relevant analysis of the quality control of the performance of public contracts, it will be necessary to ensure the effectiveness of the performance of public contracts (1) and the effectiveness of such performance (2).

The effectiveness of the execution of public contracts

In the past, MINMAP already carried out this verification, including the compliance of the signed contract with the requirements of the tender dossier, i.e. the general administrative clause and the specific administrative clause. For example, for intellectual services contracts, MINMAP systematically verified the compliance of the staff mentioned in the initial offer of the successful contractor with that indicated in its contract, as well as their actual presence in the field. In the case of replacement of the initial staff of the offer^{xix}, refractions were applied in the accounts submitted to MINMAP for prior approval, in accordance with the requirements of the contracts. This has generated significant resources for the Government Procurement Regulation Trust Account. Field monitoring visits can be announced to different stakeholders^{xx}. Unannounced descents should also be preferred. Unannounced monitoring often makes it possible to ensure the mobilization of the key personnel of the company, especially that of the private supervisor; since they are usually remunerated on the basis of the presence of its experts and its equipment. It also helps to detect offences related to the performance of benefits in the field. The on-the-spot check is carried out in particular on the basis of the specific technical clauses (TTP) for works contracts, the terms of reference (TDR) for service and intellectual services contracts, and for Supply Contracts^{xxi}.

The efficiency of the execution of public contracts

According to Article 151 paragraph 1D of the code of public procurement, the control of the performance of public procurement is aimed at ensuring compliance with the standards of quality, comfort, safety and durability of the work. This means that the performance of the services must comply with the requirements of the standards relating to the regulations in force, which is why the controllers must ensure the correct application of the standard in the field of public procurement in general and the performance of public procurement in particular.

The efficiency of the execution of public contracts is a procedure that allows the correct verification of the performance of public procurement services, it also allows the clear use of public assets in the assigned objectives to be monitored. Supervision of the performance of public contracts with a view to the proper performance of public contracts requires the following points: integrity, competence and experience. In addition to these provisions, in view of the increasing number of development projects, it is necessary to consider an increase in the number of auditors, fulfilling as far as possible the above criteria, with a view to reducing the current workload of the auditors which is very high and which thus compromises the effectiveness of the control of the execution of public contracts^{xxiii}. The execution of public contracts requires the legal and technical supervision of the control of the Ministry of public procurement^{xxiii}, the level of responsibility for the control carried out by the MINMAP, next to other actors of control is very important^{xxiv}. The definition of the control of the execution of public contracts can make it possible to put a real training plan with a view to strengthening the capacity of controllers, in particular in the areas related to the projects to be controlled^{xxv}.

The quantitative control of the execution of Public contracts in Cameroon

The quantitative control of the performance of public contracts makes it possible to determine, monitor and monitor the performance of services. Regular monitoring of public procurement in general and of the execution of public contracts makes it possible to some extent to ensure that work is progressing. In order to assess the quantitative control of the performance of public contracts, the analysis will focus on verification (1) and counter-verification of the performance of public contracts (2).

The verification of the performance of public contracts

It is therefore important to first check the controllability of a market^{xxvi}. This is an appropriate opportunity to call on the competent departments responsible for the finalization of draft contracts and the contracting commissions to ensure the quality of the dossiers entrusted to them, in particular the insertion of the relevant clauses in connection with the control structures, in order to ensure effective control during the execution of the contract^{xxvii}. In order to ensure effective control, it is necessary to follow the steps defined as follows: the first step is the collection of the documentary bundle, for each contract it is important to carry out the systematic collection of all procurement and contract performance documents. The documentation package relating to the execution of works contracts must contain: the approved execution program, the approved execution project, the approved insurance plan, the site installation minutes and the approved environmental management plan.

Counter-verification

The counter-verification allows in one way or another to certify the control that has been made a priori, it allows to assure the owner or the delegated owner of the evolution of the execution of public contracts and also allows to certify the deficiencies that have been identified in the previous control^{xxviii}. According to article 5 of the code of public contracts, the contract engineer is a natural or legal person under public law accredited by the owner or the delegated owner, for the monitoring of the execution of public contracts^{xxix}. Because of this, the engineer is responsible for the technical and financial follow-up, he appreciates, decides and gives all the instructions that have no financial impact. He reports to the head of the market department. The head of the contract Department is nothing more than a natural person accredited by the client or the delegated client for general administrative, financial and technical assistance at the stages of the definition, preparation, execution and receipt of the services covered by the contract.

According to article 45 of the code of public contracts, the engineer has the task of approving the project of execution and the different modification proposed by the contracting partner, or by the master of work if necessary, he ensures the functionality of the project and its suitability to the objectives set by the master of work or the delegated master of work, he also ensures the control of the quality of services, in case of public Master of work. In addition, it targets the accounts of the performed services, supervises the operations prior to receipt^{xxx}.

The institutional strengthening of the execution control of public contracts in Cameroon

The reform introduced in the field of public procurement by Decree No. 2018/366 of 20 June 2018 on the public procurement code is not limited to the normative strengthening of the control of the execution of public contracts. This reform also strengthens the institutional control of the execution of public contracts^{xxxii}. The attitude of the legislator is quite logical in that it is not natural to envisage a strengthening of the normative framework without taking into account the institutional framework. The first necessarily involving the second. Thus, there is an expansion of the supervisory bodies (A) and an increase in the powers of the supervisory bodies for the performance of public contracts (B).

The enlargement of the bodies responsible for monitoring the performance of public contracts

In this sense, article 43 of the new code on public procurement states that " the monitoring of the execution of public contracts shall be carried out by the supervisor or the delegated supervisor through the head of department, the contract engineer and the supervisor where appropriate ". This provision of the law does not provide sufficient information on the identity of the supervisory bodies. Reference should be made to Chapter II on the definitions of the new public procurement code in order to identify the supervisory bodies .To do this, there is an expansion of the internal control bodies through the introduction of experts (1), and the expansion of the external control bodies through the involvement of the Public Procurement Authority (2).

The expansion of internal oversight bodies: experts

The Cameroonian Public Procurement Code does not provide a definition of the word "controller". It is content with a simple enumeration of people who can be considered controllers. There is a plurality depending on the types of markets^{xxxiii}. Overall, these are the persons in charge of monitoring the contracts to be executed. It is in this sense that article 43 of the Public Procurement Code states that: "the monitoring of the execution of public contracts is carried out by the contractor or the delegated contractor through the head of department, the contract engineer, and the contractor, if any ". Article 47 (1) of the same code adds that " external control over the performance of public contracts shall be exercised by the minister

responsible for public procurement ". Overall, the function of the Comptroller of the performance of public contracts is to control the contracts performed^{xxxiii}.

However, these functions are allocated to the supervisory bodies. In other words, each supervisory body plays a special role in monitoring the performance of public contracts. Indeed, the reform through Decree No. 2018/366 of 20 June 2018 on the public procurement code has dedicated the redistribution of roles between the different actors in the public procurement sector. In defining the expert, the legislator of the new public procurement code has limited himself to apprehending the category of expert who is not controllers. It follows from that code that experts are natural persons authorised by the body responsible for the regulation of public procurement for the purpose of providing technical assistance to actors in the field of Public Procurement.

The enlargement of external supervisory bodies: The Public Procurement Authority

The Public Procurement Authority appears to be the fundamental body in monitoring the performance of Public Procurement^{xxxiv}. In this regard, Article 47 (1) of the Public Procurement Code states that " external control of public procurement shall be exercised by the ministry responsible for public procurement ". It follows from this provision of the code that the Ministry of public procurement is the lead body for external control of the performance of public contracts. No external control can be carried out without his consent^{xxxv}. It is in this capacity that he plans the various controls under his authority. No monitoring of the execution of public contracts can be carried out without the programming of the MINMAP. By the way, programming the MINMAP alone is not enough. The latter should also authorize the implementation of the monitoring of the performance of public contracts. A check carried out without the programming and authorization of the MINMAP cannot be valid. These requirements are public policy.

Moreover, auditors who advise themselves to monitor the performance of public contracts without observing at least these two requirements are liable to no penalties and their reports will not be taken into account. Thus, article 194 of the new procurement code rightly points out that: "the Public Procurement Authority may take against public sector actors found guilty of violating the provisions of this Code a decision prohibiting intervention in the procurement and monitoring of the performance of public contracts for a period not exceeding two (2) years".

Increasing the powers of the bodies responsible for monitoring the performance of public contracts

The new code revises a series of provisions applicable until then while redistributing roles among public procurement actors in Cameroon. From the new distribution, there is a clear separation of responsibilities between stakeholders, thus avoiding the situation of MINMAP, which is sometimes responsible for settling disputes in which it is itself involved. Thus, in order to analyse the powers of the supervisory bodies, we shall examine the powers of the regular bodies responsible for supervising the execution of public contracts (1) and the powers of the special bodies responsible for supervising the execution of public contracts (2).

Increasing the powers of the bodies responsible for the regular monitoring of Public Procurement

The scope of the competencies of the building blocks or delegated building blocks is broad, but as part of our study, we will explore the new powers that have been granted to the building blocks or delegated building blocks^{xxxvi}. The client is head of a ministerial department or equivalent, head of the executive of a decentralized territorial authority (CTD), and Director General of a public institution, representing the beneficiary administration of the services provided in the contract. The delegated owner is a person exercising, as an agent of the owner, part of the duties of the latter. They are the governor of the region and the prefect of the department, the head of a diplomatic mission of Cameroon abroad, authorized to pass and sign contracts financed from delegated appropriations by a client, and if necessary, the head of a project benefiting from external financing^{xxxvii}. In keeping with these definitions, it is possible to determine why the financial availability of the execution of public contracts is handed over to the owner or the delegated owner^{xxxviii}. The monitoring and control of the execution of public contracts is carried out by the project manager or the project manager delegated through the head of department, the contract engineer, and the project manager as appropriate.

The powers of the special bodies responsible for monitoring the performance of public contracts

External control of the execution of contracts through: unannounced and subsequent checks of the works and services performed; visas only on the final accounts and invoices, while receiving copies of all provisional accounts; reports to contractors and delegated Contractors

of the deficiencies observed; reports to the regulatory authority of the shortcomings of Public Procurement actors requiring capacity building^{xxxix}. To reaffirm and reinforce the anchoring in the search for efficiency, of the new Cameroonian system of Public Procurement made more visible and more responsible by the reform, and firmly supported by the international standards in this field that enshrine freedom of access to public procurement, equal treatment of candidates and transparency of procedures ; increase the effectiveness and efficiency of the sector by inducing more consistent controls with a view to a better quality of infrastructure and state acquisitions, thanks to an optimal contribution of the procurement link in the chain of responsibilities contributing to the continuous improvement of the consumption rate of the Public Investment Budget(BIP), determining factor for a sustained economic growth, necessary for the harmonious and accelerated development of Cameroon . The revised procurement code reinforces what the legislature calls the "ethical principle" and toughens penalties against any actor who is guilty of corruption and other fraudulent practices, such as fraudulent practices, collusive, obstructive or coercive practices, insider trading or conflicts of interest^{xl}. Article 194 provides that the Public Procurement Authority may take action against public sector actors found guilty of violating the provisions of this code. A decision prohibiting the award and monitoring of the performance of public contracts for a period not exceeding two years. And in the event of an established failure in the performance of their duties, they may be excluded from the system of public procurement for a period not exceeding two years without prejudice to the penalties provided for by the laws and regulations in force^{xli}. As for private sector actors, the following penalties under article 191 may be imposed: confiscation of the guarantees provided by the offender in the framework of the tender procedure incriminated according to the seriousness of the fault committed, withdrawal of their certificate of categorization^{xlii}.

CONCLUSION

Ultimately, it was a question of addressing the issue of monitoring the performance of public contracts in Cameroon. The hypothesis used in the analyses was that of strengthening the control of the execution of public contracts in the light of the reform of the Public Procurement Code in 2018. To this end, the study focused on two main areas: on the one hand the

strengthening of standards and on the other the institutional strengthening of the control of the execution of public contracts.

In the first area, it is fundamental to note that the monitoring of the performance of public contracts has undergone a real change. The new regulatory framework for the control of the execution of public contracts now focuses on the search for better performance in the execution of contracts. The control of the execution of contracts is no longer a routine simply to ensure that the contracting party of the administration respects its commitments. On the contrary, there is a strong consideration of executed contracts. More than in the past, the public procurement code has introduced two normative mechanisms aimed at ensuring effectiveness and efficiency in the execution of public procurement contracts. This involves qualitative and quantitative control of the execution of public contracts. These enforcement control mechanisms appear to be innovations in comparison with the old Public Procurement Code of 2004 which was limited to the traditional forms of control, i.e. a priori and a posteriori control, on-the-spot and on-the-spot control. The new public procurement code, while renewing these traditional control mechanisms, focuses on quality and quantity requirements. Thus, while Quality Control aims to ensure that contracts are executed in accordance with the requirements of the rules of the art and qualitative standards, quantitative Control aims to ensure the reality of the material and technical data provided by the contracting party of the administration in the framework of its office in order to enable the supervisory bodies to better deploy themselves.

The second priority, namely the institutional strengthening of the supervision of the execution of public contracts, is simply the expansion of the supervisory bodies and the increase in their competence. In the new procurement code, there is a requirement for experts not only as controllers, but also as assistant controllers in case there are controllers who are not experts like the procurement authority. The latter has indeed been given the status of Controller of the performance of public contracts. In the old procurement code, it exercised such control through the specialized bodies of MINMAP.

From now on, the Public Procurement Authority itself can be directly involved in monitoring the performance of public contracts. It is in this capacity that it is specially recognized the possibility of exercising unannounced control. This may lead to an increase in the powers of the bodies responsible for monitoring the performance of public contracts. The regular bodies, as well as the special bodies responsible for monitoring the execution of public contracts, have

seen their competences increased in the reform of the public procurement code of 2018. The most illustrative case is that of the Public Procurement Authority, which undoubtedly has the power to impose sanctions.

All in all, the control of the execution of public contracts in Cameroon has certainly made notable progress with the new Public Procurement code of 2018. The latter creates a considerable break with the public procurement code of 2004 which, in view of its age, no longer responded effectively to the socio-economic realities of Cameroon. Unfair practices, and evils such as corruption, misappropriation of public funds, and bad governance were also obstacles to the proper execution of Public Procurement. Of course, it must be noted with force, the reform introduced by Decree No. 2018/366 of 20 June 2018 on the Code of Public Procurement in Cameroon cannot solve by itself all the issues that revolve around the execution of Public Procurement. Although the efforts made are already commendable by strengthening the control of the execution of public contracts, it is still necessary that the accompanying measures be put in place to better implement the execution control of public contracts.

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