

# **The Impact of the New Regulation of Public Enterprise Contracts on the Cameroonian System of Public Procurement Contracting**

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*Since its implementation in Cameroon, the law of public procurement contracts has strongly been oriented toward the classical technique of adjudication; which is going to develop an almost immutable mechanism, a system the influence of which is much more visible on public procurement. However, the evolutionary and adaptatory character of rule of law, leads either to reevaluate certain rules, either to modify its and the public company procurement has not been able to deviate to this legal dynamism. It will no doubt have stated that the public company procurement has been placed under a new regulatory dependence that will significantly influence the game of contracting public procurement and change its configuration as it has been perceived for long time and maintained within Cameroon's positive law. It is, in fact, this legal upheaval that will produce incidence which can be identify through this study, both in terms of organic structure and material functioning.*

*Keywords: incidences, regulation, public contracts, public companies, system, public contracts process, public procurement contracts*

## **INTRODUCTION**

A generic term covering public procurement, public service delegations and partnership contracts<sup>1</sup>, public procurement has since medieval times<sup>2</sup> been based on the logic of adjudication<sup>3</sup>, which is characterized by the choice of the lowest bidder<sup>4</sup>. It is, moreover, in this rationality that the Cameroonian system of public procurement will be based, guaranteeing, in addition, respect for the general principles of freedom of access to public procurement, equal treatment of candidates and transparency of procedures<sup>6</sup>.

Thus the State, local authorities<sup>7</sup>, public institutions and companies will join this trend of outsourcing to<sup>8</sup> satisfy the public cause. Each for its part will pursue the general interest through its own goals and according to its own specific means, while remaining at the service of the State<sup>9</sup>. For more than a decade, this orientation will be followed by various basic texts on public procurement, notably the decree establishing the <sup>10</sup>2004 market code, the decrees creating a regulatory agency<sup>11</sup> and a Ministry of Public Procurement (MINMAP) <sup>12</sup>and the texts of the reform of March 8, 2012<sup>13</sup>.

These will present a legal landscape marked from an organic point of view, by a strong presence of the authority in charge of markets<sup>14</sup> and the regulatory body, and from a material point of view by traditional standards of procurement, execution and control.

In other words, a virtually irremovable legal mechanism will be put in place to oversee the entire process of contracts awarded by the above-mentioned public bodies and to guarantee their proper functioning under the diligence of MINMAP and the technical assistance of ARMP. It will lead to the

establishment of standardization within the administrative practice, characterized both by the place of honor occupied by the authority in charge of the organization and proper functioning of public procurement,<sup>15</sup> which assumes a certain number of attributions<sup>16</sup> that it alone has the prerogative to perform, and by the traditional game dominated by principles and rules, around the different procedural phases of the contract.

However, as unexpected news, on June 12, 2018, the circle of public persons subject to the <sup>17</sup>2004 market code will be cut off one of its members: **public companies**.

Indeed, a decree<sup>18</sup> is born in the normative universe of the public markets and derogates from the decree n° 2004/075 relating to the code of the public markets, the authority which it had on the markets of these public structures from now on to the new and particular<sup>19</sup> statute. This is simply to say that the markets of public companies, thanks to the decree of June 12, 2012, are no longer subject to the public procurement code, even despite the entry into force of a new code<sup>20</sup>. Consequently, they will have a particular legal regulation which will come to upset and modify the traditional configuration of the public order and it is what this reflection aims in particular to reveal.

It will therefore be about the following question: *What is the impact of decree n° 2018/355 of June 12 (fixing the common rules applicable to the markets of public enterprises) on the classic legal universe and the traditional game of public procurement in Cameroon?* to question, the new legal dynamics of the markets of public enterprises which would strongly bring about changes, which would consequently redefine its already established mechanisms and the landscape in which they are expressed since then.

Therefore, the exegetical method<sup>21</sup> was used for a meticulous study of the texts; but also the hermeneutical method<sup>22</sup>, to reveal to the readers the deep idea of these texts and the thinking of the legislator on the one hand, and on the other hand to provide the quintessence of this new regulation which produced impacts both on the organic and classical field (**I**) and on the material (**II**) and traditional framework of the public procurement process in Cameroon.

## ORGANIC IMPACT

Public procurement law in Cameroon, and precisely public procurement law, has accustomed the theorists and practitioners of public procurement to a configuration that would probably be described as classic, even trivial and this since the creation in 2011, of the Ministry of Public Procurement<sup>23</sup>.

Indeed, this ministerial department has since then been the hub of the entire process, the guarantor and manager of the system of public contracts awarded by all the contracting<sup>24</sup> authorities, these representatives of public administrations. However, this will not always be the case for all these administrations, as it is true that the decree n° 2018/355, dated June 12, 2018, setting the common rules applicable to public company contracts, will deal a real and significant blow to this legal standard already in place.

This will lead to a considerable reduction in the activities of MINMAP, ARMP and MO<sup>25</sup>, the traditional players in public order and procurement (**A**), and will contribute to making the Board of Directors a major guarantor of the public enterprise procurement process, which will at the same time drain corollaries on the traditional organic framework (**B**) of these public contracts in Cameroon.

### The MINMAP, ARMP and the Project Owner, Restricted

The top of the hierarchy of public procurement management in Cameroon, is occupied by the Ministry of Public Procurement, which has a significant number of attributions to officer so. The entire process to this effect, has become its preserve, at least if we stick to the provisions of paragraph 2 of Article <sup>1</sup>of Decree No. 2012/075<sup>26</sup> and Article 50 of the new <sup>27</sup>Public Procurement Code.

However, since the entry into force of Law no. 2017/011, the landscape of public companies, which will undergo a legal reorganization, consolidated by Decree no. 2018/355 of July 12, 2018 setting the common rules applicable to the markets of public companies, will bring a multitude of legal changes, expressing a considerable reduction in the influence of the authority in charge of the markets and, in the wake, of the regulatory and contractualization authorities on the control of public companies.

*It should* be noted that this reduction will benefit the Board of Directors, which under the terms of the said law of 2017: *"ensures compliance with the rules of competition, equal treatment of candidates,*

*transparency and fair price*<sup>28</sup>. To put it another way, public companies that are no longer subject to the provisions of the <sup>29</sup>public procurement code will see their contracts placed under the supervision of the board of directors.

Thus, this *"economic unit endowed with legal and financial autonomy, exercising an industrial and/or commercial activity, and whose capital is wholly or majority owned by the State or a public law legal entity"*<sup>30</sup> will have the board of directors at the head of the management of its contractualization process, which restricts and even *de facto* pushes back the action of MINMAP, the classic major manager of the entire system. But it must also be said that the actions of other major bodies, such as ARMP and MO, will also be under assault from the new regulation of these companies' markets. Indeed, the role of supervisor and facilitator of the system will also be restricted in the field of the market contracts of public enterprises. These reductions will have in one camp as in the other the merit to be studied here.

Firstly, with regard to the case of MINMAP's action, as noted above, this body, the true conductor of <sup>31</sup>the entire public procurement system, (at least before the entry into force of Decree No. 2018/355), will give up a large part of its management influence to the Board of Directors under the new regulatory framework for public enterprise contracts. As a result, the Board is now the *"(...) body vested with the broadest powers to act in all circumstances on behalf of the company. It ensures compliance with the rules of competition, equal treatment of candidates, transparency and fair price in the process of awarding contracts"*<sup>32</sup>. The new status granted to the council, the deliberative body of this public structure, is special in that it embodies the authority in charge of public procurement for state-owned enterprises formerly subject to the Public Procurement Code and therefore subject to the full authority of MINMAP.

This transit can be observed at several levels: the Board in normal periods *"(...) sets the terms and conditions for the organization and operation of the internal procurement commission, the appointment of its chairman, its members, the secretary and the evaluation of bids; (...) grants express authorizations for the award of a contract in accordance with the appropriate procedures and by mutual agreement (...)"*<sup>33</sup>. In troubled times, the same board *"... arbitrates cases of disagreement between the contracting authority and the internal procurement commission (...)"*<sup>34</sup>, which was the prerogative of MINMAP. These various attributes are guaranteed to MINMAP by the Public Procurement Code and its implementing texts for the contracts of other public authorities<sup>35</sup>, but for company contracts, MINMAP undoubtedly sees its action diminished and even almost inoperative.

As for ARMP's action, it is particularly limited in terms of its ability to recruit independent observers to ensure compliance with the regulations during the meetings of the commissions and sub-commissions that are supposed to examine bidders' bids. Indeed, according to the new rules, the bids of bidders received within the framework of public enterprise contracts and examined during the meetings of the commissions and sub-commissions, will no longer be subject to the right of scrutiny of the independent observer<sup>36</sup>, this undisputed actor of transparency. This could even, to a certain extent, weaken the principle of transparency of procedures<sup>37</sup> so dear to the Cameroonian normative framework of public procurement. On the contrary, only the independent auditor<sup>38</sup> will be able to intervene *ex post*.

Also, the creation by the board of directors of an arbitration and appeals review committee, for the express cases of disputes raised during the procurement process of public enterprises, removes the agency from<sup>39</sup> management of all public procurement disputes that the committee in charge of reviewing appeals and placed with it, ensures<sup>40</sup>.

Finally, speaking of the case of the project owner, the latter previously had the monopoly of initiative and of conducting the contracting<sup>41</sup> and execution operations. However, with decree n° 2018/355, this monopoly is being undermined with regard to the contracts of public enterprises. Thus, the board of directors is the body that *"approves the procurement plan (...)"*<sup>42</sup> proposed by the director general, who is also the contracting authority<sup>43</sup>. Here again, this is an expression of one of the extended powers of the board, granted to it by the new regulations on public procurement by state-owned enterprises, and it reinforces the position of a transition from <sup>44</sup>monopoly management to <sup>45</sup>shared management.

In other words, the multiple powers that were held by the contracting authority alone<sup>46</sup> are, with the new rules, diminished by the important and significant influence of the <sup>47</sup>deliberative social body, and this

will only have led to the latter being erected as a major guarantor of the process of public enterprise contracts.

### **The Board of Directors, Dedicated to**

Formerly intervening only in an advisory capacity in the process of public enterprise contracts, the board of directors is today and thanks to decree n° 2018/355, erected as the hub of these EPICs<sup>48</sup> in Cameroon. It would therefore not be illusory to qualify it as a major guarantor of this delicate process.

It is in this capacity that he finds himself invested with the most imposing powers<sup>49</sup> in the matter, which generates several corollaries on the classical organic structure, as it was always constituted before the entry of this reforming decree. These are related to the attributions and powers of the said council, in particular :

#### *The Power to Define Contract Thresholds<sup>50</sup> .*

Contrary to the thresholds predefined in the code<sup>51</sup> for contracts relating to other public authorities, the thresholds for contracts of public companies are defined by the board of directors<sup>52</sup>. This empowerment, derived from the provisions of the new regulations, makes the board the *monarch of the* market system of these structures and contributes to placing it comfortably in the role of the most influential manager.

#### *Authority to Approve the Procurement Plan*

In addition, the procurement plan previously defined by the project owner<sup>53</sup> on behalf of the public company must first be approved by the council before any implementation. This means that the approval of the said council is a determining factor for the procurement system but also for its proper functioning. Disapproval does not guarantee that contracts can be awarded, executed and monitored with complete peace of mind. Here again, the Board's power is an imposing one within the contract management bodies.

#### *The Powers of Prior and Express Authorization of<sup>54</sup>Exceptional Procedures and by Mutual Agreement<sup>55</sup>*

Indeed, it is the authority in charge of contracts that was given this prerogative in the<sup>56</sup>2004 code. But with the new legal corpus of June 20, 2018, the authority will see its control reduced to the procurement contracts of other public entities, the case of state-owned enterprises subject to other regulations, and henceforth derogating from the public procurement code.

All of this seems significant enough to show that MINMAP's place in<sup>57</sup> the context of the granting of prior authorization subsequent to the request of the contracting authority for the award of certain types of contracts with exceptional<sup>58</sup> procedures or <sup>59</sup>*limited competition* is now occupied by the Board of Directors.

Does this mean that these two bodies - one of which is in conformity with the public procurement code, and the other subject to special derogatory provisions of the code - are basically the same? Or would it seem that they have the same weight and the same influence, in terms of this decisive prerogative for the conduct and proper functioning of the entire process?

One thing is certain, it is that Decree No. 2018/355, will have had a palpable impact within the organic order of the overall process of contractualization of markets in Cameroon.

#### *Powers of Sanction, Review of Reports and Arbitration*

It is properly naïve to deny the status of plenipotentiary of the board of directors in the management of public enterprise contracts, especially since it has powers "formerly" almost devolved to the ministerial department in charge of public procurement management. These are :

The power to sanction procedures that violate the regulations in force and the perpetrators thereof<sup>60</sup>. Thus, the council, like the MINMAP for the contracts of other types of public authorities<sup>61</sup>, is a sentinel within the process of public enterprise contracts and, in this sense, receives all the documents generated during the different phases of the process<sup>62</sup>. It is on this basis that it will be able to verify whether these phases have not been marred by irregularities, embezzlement, indelicacy, violations of neutrality and fairness<sup>63</sup>, and it will undoubtedly sanction the perpetrators of<sup>64</sup> such violations.

Prerogatives related to the review of audit reports<sup>65</sup>, which is still part of its general supervision of the process. It remains the body best equipped to ensure that the reports are submitted to it by the oversight bodies, but also to prescribe objective and realistic measures in line with the reports<sup>66</sup>.

Arbitration of cases of disagreement between the contracting authority and the internal procurement commission<sup>67</sup>. This case was also provided for in Article 30 of Decree No. 2012/074 of March 8, 2012<sup>68</sup> setting out this case of disagreement, which resulted in arbitration by MINMAP<sup>69</sup>. Arbitration, which, by the way, is increasingly subject to the administrative courts, to say it with Professor Magloire ONDOA, "*a deaf and subtle competition*"<sup>70</sup>.

The new code will go further, moreover, by providing that in the event of disagreement, the market authority will take coercive measures against those responsible for the scramble in the process. Article 50 of the code will stipulate that MINMAP will: "*impose sanctions on the perpetrators of bad practices (...)* as well as *on disagreements between public officials*."

From the foregoing, it is clear to what extent the council has replaced itself as the authority in charge of procurement for public enterprises, such as MINMAP for contracts of the State, decentralized local authorities and public establishments. Other powers still express the broadness of its attributes.

### *Powers of Creation, Designation and Implementation*

The scope of the prerogatives conferred by the new rules on the Board of Directors also assumes creative proportions, when one considers the provisions of Article 6 of Decree No. 2018/355: "*It creates the Arbitration and Appeals Review Committee (...)*"<sup>71</sup>. Contrary to this, the management of disputes arising from the procurement of other public entities is handled by a committee<sup>72</sup>, which is rather placed with the regulatory agency<sup>73</sup>. This further reveals the special status enjoyed by these public bodies.

In addition, the Board has further discretion in appointing the officers of the internal procurement committee<sup>74</sup>. The board appoints the chairman, members and secretary<sup>75</sup>, to the chagrin of the contracting authority, which used to have this power<sup>76</sup>. It is obvious that the regime of public procurement in Cameroon as it was established has undergone a rather obvious organic change.

Thanks to this change, the board will even be able to set up the internal structure for the administrative management of contracts, "*the main interface between the control bodies and the public company*"<sup>77</sup>, which will be placed under the authority of the contracting authority, to assist it in the execution of its very sensitive attributions<sup>78</sup>.

In short, the dynamics driven by the rules on public enterprise markets, with regard to all that has just been demonstrated, reflects the virtual absence of the MINMAP, the leading authority in this process, in the organic sphere of public enterprise markets, even if it is not excluded that it exercises its right of oversight<sup>79</sup> and intervenes in external control<sup>80</sup> and that the ARMP assumes its role as an archiver<sup>81</sup> and regulator<sup>82</sup> within the materialization of this process.

## **MATERIAL IMPACT**

The shock caused by the entry into force of a particular decree setting out the common rules applicable to public enterprise contracts has not only affected the organic sphere; it will go far beyond it by extending to the material framework, that is to say, to the very unfolding of the process. In other words, Decree No. 2018/355 of June 12, 2018 has generated new issues that can be seen not only in the course of the procurement phase **(A)**, but also in the other phases **(B) of the** public procurement process.

### **Material Innovations in the Handover Phase**

Public procurement in general, which is by definition "the process of acquiring goods, works and services, resulting from the award of the contract to the supplier, contractor or service provider whose bid has been selected in accordance with the principles and selection rules set out in the public procurement code"<sup>83</sup>, is also considered a competitive phase by the new decree no. 2018/355 on public enterprise contracts. However, the entry into force of the latter decree has also helped to readjust the standard procedure for the awarding of public enterprise contracts.

If the usual procedures such as tendering, direct agreement or request for quotation are maintained as in the public procurement code<sup>84</sup>, it should also be noted that the new rules will adopt, as well as the rules

resulting from the 2018 code, new types of contracts<sup>85</sup>. However, it is at the level of the procurement process that incidental innovations can really be apprehended.

With regard to the prerequisites for the procurement process, the Board of Directors, this new senior procurement officer for public enterprises, must give its prior approval by a resolution<sup>86</sup> to the procurement plan defined by the contracting authority; which, in particular for other public structures, is the responsibility of the contracting authority in conjunction with the ministry in charge of public procurement<sup>87</sup>.

In terms of procedures, it is at this stage that we observe a strong expression of regulatory innovations. For example, the Board of Directors has been granted operational latitude, where circumstances require, to reduce the time required to submit bidders' bids<sup>88</sup> to the internal procurement commission responsible for examining them.

Similarly, it is now the responsibility of this council to determine the terms and conditions for the payment of the bid bond<sup>89</sup>, which in the 2004 code was initially set out in the tender documents<sup>90</sup> that were prepared and drawn up by the owner or the delegated owner after the preliminary studies<sup>91</sup>. All this creates contractual circumstances in the course of the procedures, which are different from those that have always been perceived within the empire of state-owned enterprises.

On the other hand, certain services such as those which constitute the scope of application of the quotation request procedure may see their amount readjusted<sup>92</sup> within the framework of company contracts, contrary to what was defined by the decree fixing the terms of application of the quotation request<sup>93</sup>.

Also, alongside the new types of markets mentioned above, which companies have in common with other public structures, the new regulations seem to have adopted the **adapted markets**. Indeed, these new techniques of acquisition are found in the French normative framework of the markets.

Florian LINDITCH has already stressed this in his work<sup>94</sup> on the French code of August 1<sup>st</sup>, 2006: "contracts may also be awarded according to an **adapted procedure** when the estimated amount of the requirement is below the thresholds"<sup>95</sup> and the new French code of public procurement specifies: "an **adapted** procedure is one by which the buyer **freely** defines the terms and conditions for awarding the contract, in compliance with the principles of public procurement (...)"<sup>96</sup>. The reading of these last provisions confirms that these types of contracts awarded according to the adapted procedure best correspond to the contracts of public enterprises in Cameroon, where the board of directors can effectively act freely in the procurement procedures.

Finally, apart from the recruitment of independent observers who intervene with the commissions in a standard manner, in the procurement phase in a global manner, another type of recruitment is planned for corporate contracts: **that of individual consultants**. These are in fact recruited by the contracting authority and not by ARMP<sup>97</sup>, for the realization of intellectual services or the provision of non-quantifiable services<sup>98</sup>. The amounts of their services, the cases of missions for which they are used, their qualifications and the cases of exemption from which they are subject are specified by the subsequent provisions.

This multitude of innovations makes it possible to define for public companies a special public procurement regime that differs from that of other public authorities, and this is the playground for the impact of Decree No. 2018/355, which cannot simply be based on this pivotal<sup>99</sup> phase.

### **New Impacts in Implementation and Control**

The influence of the new decree governing business contracts on the public procurement system is not only perceptible at the level of the gateway<sup>100</sup>, but also has no less significant ramifications at the level of the execution phases and the control of the latter.

The rules relating to **the execution of contracts** of public enterprises, for their part, introduce a certain number of innovations that modify the classic course of contract execution as we have always known it. This is true both at the level of the means and procedures of execution and at the level of guarantees of proper execution of the contract.

What the new regulations describe as means and procedures of execution are in fact the same methods adopted by the 2004 code<sup>101</sup>, namely: *subcontracting*, *sub-contracting* and *co-contracting*. Although their legal recognition has been confirmed in the provisions of the new decree on business contracts, their

implementation will nevertheless create a zone of demarcation from the legal framework of other public authorities.

Indeed, for *subcontracting*<sup>102</sup>, a ceiling is now allowed; the cumulative amount of the services concerned may not exceed 50% of the amount of the contract<sup>103</sup>. This restricts the margin of manoeuvre of the contract holder or co-contractor, who can no longer subcontract<sup>104</sup> beyond this threshold defined by the new texts on the subject.

As for *co-contracting*, *the*<sup>105</sup> terms and conditions of which are specified in the bidding documents, one might also fear that in executive practice it might be readjusted when one knows that certain terms and conditions of the bidding documents no longer depend solely on the contracting authority as before<sup>106</sup>; the council having the broadest powers to act freely and with latitude on the entire process of contractualization of the markets of the State's economic units.

Performance bonds are also a notorious case of legal innovation. Indeed, if the main guarantees, i.e. the final bond<sup>107</sup> and the retention of guarantee<sup>108</sup> remain capped at the same percentage, a possibility of switching the latter into a performance guarantee<sup>109</sup> is now possible. In addition, another possibility of replacing the surety bond by the guarantee of a surety<sup>110</sup> bond from an approved banking institution in favor of the client or by a personal and joint and several surety bond<sup>111</sup> is also conceivable.

In addition, there is also a breakthrough alongside small and medium enterprises, civil society organizations in the execution of public enterprise contracts that can produce either a check, a bank check or a legal mortgage, a guarantee from a banking institution or a financial institution approved in accordance with the texts in force<sup>112</sup>. This is the substance of article 92 paragraph 3 of the new decree which was not provided for under the old legal mechanism and which brings new means and new prospects for the execution of contracts of these structures formerly subject to the market code in Cameroon.

Other rules, this time related to **enforcement**, will also contribute. In this case, these are measures that concern both internal and external control of the company in the context of its contracts.

As far as internal control is concerned, it is naturally operated by the project owner<sup>113</sup> through a certain number of bodies: the head of department, the engineer and the project manager<sup>114</sup>. The Board of Directors will also act logically in this direction through the exercise of its functions by examining the various reports on the control missions carried out by<sup>115</sup> these aforementioned bodies, and will sanction any violation of the regulations as well as those who are the authors<sup>116</sup>.

External control is conducted by MINMAP, which has powers for this purpose, the content of which is largely detailed in Articles 19 (paragraphs 1 and 2), 107 and 108 of Decree No. 2018/355<sup>117</sup>. Furthermore, the power of the ARMP cannot be denied, which also plays a significant role in the control of execution, notably through the recruitment of independent auditors<sup>118</sup> who are responsible for carrying out a conclusive material examination of the contracts that have been awarded and executed each year.

These two declinations of the control of the execution of contracts of public enterprises, coupled with measures on the execution of contracts, have in short the character of legal incidence in that they bring specific elements adapted to the particular context of the enterprises which, it should be recalled, has a material and objective functioning opposite to that of other public authorities and this is undoubtedly one of the reasons which will lead the authorities to remove it from the influence of the code and thus from the classic system of contractualization of contracts in Cameroon.

## CONCLUSION

At the end, this work will have made it possible to research and present the impact of the new regulations on public enterprise markets on the classic atmosphere of the public procurement contracting process in Cameroon, through the study of its innovations and legal arrangements. The task is thus in line with the normative particularism of the markets of these economic units whose functional character is close to that of private companies: the industrial and commercial service. It is quite simply that the public authorities, before defining these contractual rules by decree of July 12, 2018, will first proceed by marking out this sector by a law, that of July 12, 2017, on the general status of public companies. It will therefore have been necessary to create a framework that is in line with this law, and it is a successful gamble that

will consequently produce influences on the market system in general, as it has long been perceived. From the procurement phase to its execution and control, Decree No. 2018/355 will have significant impacts, modifying both the surrounding organic context and readjusting the traditional material framework of markets in Cameroon.

## ACKNOWLEDGEMENT

*Article ayant bénéficié d'une subvention et de l'accompagnement du CNRS et de la MSH-Paris Saclay.*

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Translated & edited by American Publishing Services (<https://americanpublishingservices.com/>).

## ENDNOTES

1. SAUSSIÉ (S) and TIROLE (J), "Renforcer l'efficacité de la commande publique", *les notes du conseil d'analyse économique*, 2015, vol. 3, No. 22, P 1.
2. MRAD (D), Subjectivisation du contentieux et contrat administratif, Thesis presented and publicly defended at Guyancourt, Université Paris-Saclay, December 2018, P 20.
3. Awarding is defined as automatically awarding the contract to the lowest priced contractor, supplier or provider. See BEAUGÉ (T), *Dictionary of Public Procurement*, Afnor, 2007, P 6.
4. MRAD (D), Subjectivisation du contentieux et contrat administratif, op cit, P 20.
5. *Ibid.*, P. 23.
6. Article 2 of Decree No. 2018/366 of June 20, 2018 on the Public Procurement Code. This code, moreover, will incorporate two other new principles: efficiency and integrity.
7. These are considered in Cameroon as decentralized territorial authorities and within the meaning of Article 55 of Constitutional Law No. 96/06 of 18 January 1996 they are the "regions and communes", any other authority being created by law.
8. Read about *outsourcing*, SAUSSIÉ (S) and TIROLE (J), " Renforcer l'efficacité de la commande publique ", *notes du conseil d'analyse économique*, op cit, P 2; and NKOU SONGUE (F), *Marchés publics au Cameroun : Entre recherche d'efficacité et pes pesanteurs systémiques*, dissertation for the Master's degree in Public Administration, University of Strasbourg, ENA, 2014, P 3.
9. RICHER (L), *Droit des contrats administratifs*, 6th edition, LGDJ, Lextenso éditions, 2008, P 10.
10. Resulting from decree no. 2004/275 of September 24, 2004 on the public procurement code.
11. Decree No. 2001/048 of February 23, 2001 on the creation, organization and operation of the Public Procurement Regulation Agency (ARMP).
12. The Ministry of Public Procurement will be created by Decree No. 2011/410 of December 9, 2011 on the formation of the government.
13. Decree no. 2012/074 of March 8, 2012 on the creation, organization and operation of the Public Procurement Commissions; Decree no. 2012/075 of March 8, 2012 on the organization of the Ministry of Public Procurement; Decree no. 2012/076 of March 8, 2012 amending and supplementing certain provisions of Decree no. 2001/048 of February 23, 2001 on the creation, organization and operation of the ARMP.
14. Who with the 2004 procurement code is the Prime Minister and who, with its creation in 2011, its organization and operation in 2012, and the provisions of Article 50 of the new public procurement code that came into force on June 20, 2018, will become the Ministry of Public Procurement (MINMAP).
15. Article 1 paragraph 2 of decree n° 2012/075 of March 08, 2012 relating to the organization of the ministry of public procurement.
16. *Ibid*, section 2.
17. Definitions a and f of article 5 of the 2004 code, which refer successively to public procurement contracts and contracting authorities, do indeed classify public and parapublic sector companies in the category of public persons alongside the State, decentralized local authorities and public establishments, which are able to have works carried out or provide goods and services through public procurement contracts.
18. Decree no. 2018/355 of June 12, 2018 setting the common rules applicable to the markets of public companies.



19. The new status of public companies will be redefined by law n° 2017/011 of July 12, 2017 on the general status of public companies. This law will repeal the former legislation resulting from law n° 99/016 of December 22, 1999 on the general status of public establishments and companies in the public and parapublic sector, which then informed the 2004 code on the former status of state-owned companies.
20. Fruit of the decree n° 2018/366 of June 20, 2018
21. NGUEDIA MEIKEU (H), *Le juge et les critères du contrat*, Thèse pour le doctorat Ph.D en Droit public, Université de Yaoundé II-Soa, December 2015, quoting BERGEL in P 42, *"to exegesis of texts is to seek their meaning and their scope, by the sole analysis of these texts themselves"* (Cf. BERGEL (J-L), *méthodes du droit*, théorie générale du droit, paris, Dalloz, 2nd ed., 1989, P.10).
22. CUMYN (M) and SAMSON (M), "la méthodologie juridique en quête d'identité", *Interdisciplinary Journal of Legal Studies*, Volume 71, Number 2, 2013, PP 1-42.
23. Placed under the authority of a minister delegated to the presidency, in charge of public procurement.
24. The contracting authorities are defined by article 5 paragraph 1 definition f of decree n° 2004/275 of September 24, 2004, as follows: *"head of a ministerial and assimilated department, head of the executive of a decentralized local authority, general manager and director of a public establishment and a public and parapublic sector company, representing the administration receiving the services provided for in the contract"*.
25. Project owner.
26. Decree No. 2012/075 of March 8, 2012, on the organization of the aforementioned MINMAP.
27. The new public procurement code in Cameroon is issued by Decree No. 2018/366 of June 20, 2018.
28. Article 119 paragraph <sup>1</sup> of Law n° 2017/011 of July 12, 2017 on the general status of public companies, cited above.
29. *Ibid.*
30. Definition 5 (h), of the aforementioned Decree No. 2018/355.
31. NKOU SONGUE (F), *Marchés publics au Cameroun : Entre recherche d'efficacité et pesanteurs systémiques*, dissertation for the Master in Public Administration, University of Strasbourg, ENA, 2014, P. 20.
32. Article 6, paragraphs 1 and 2 of the aforementioned Decree No. 2018/355.
33. Par. 2, items 3 and 11 of the above-mentioned article.
34. *Ibid. at No. 9.*
35. State, decentralized local authorities and public institutions.
36. Regarded as a: *"consultant recruited by the administration in order to ensure compliance with the regulations, the rules of transparency and the principles of equity in the public procurement process"*, (Cf. article 5 hh of decree no. 2018/366 on the public procurement code) the independent observer intervenes during the meetings of the commissions in charge of examining bids for the contracts of other public entities.
37. Principle guaranteed by articles 6 of decree n° 2018/355 and 2 of decree n° 2018/366 cited above.
38. Article 5 a) defines it as: *"a firm of established reputation recruited by the body responsible for regulating public procurement for the purpose of carrying out the annual audit of contracts"*. This body, recruited by invitation to tender, will only intervene after the fact by carrying out audits.
39. This power of creation of the committee in charge of arbitration and examination of appeals is guaranteed by the provisions of paragraph 2 point n° 10 of the aforementioned decree n° 2018/355.
40. See Article 49 of Decree No. 2018/366, referring to the body in charge of examining appeals.
41. Article 111 of the aforementioned Decree No. 2004/075 of September 24, 2004.
42. Article 6 paragraph 2 of the aforementioned decree n° 2018/355.
43. V. article 5 definition(s) of the decree n° 2018/366 relating to the code of contracts, concerning the categories of contracting authority.
44. To express the idea that the management of the procurement process of public enterprises was based solely on the initiative or major action of the contracting authority (general manager), whereas with the new texts, this monopoly no longer seems to be guaranteed.
45. Management no longer unipolar, but multipolar management of public enterprise markets. That is to say, management that is the responsibility not only of the contracting authority but also of the Board of Directors (without mentioning other bodies such as the procurement commissions and the internal structure for the administrative management of contracts). The board has become a pillar of the system of contract awarding among the ruling elite of state-owned enterprises.
46. Another synonym for project owner. See Article 5, definition (e) of Decree No. 2018/366 on the Public Procurement Code.

47. The qualification of "*corporate bodies*" concerns both the board of directors and the general meeting of shareholders. On this subject, see ROBÉ (J-P), *L'entreprise et le droit*, Que sais-je, PUF, 1999, P 32.
48. Public establishments of an industrial and commercial nature; the EPIC status is closer to that of a company. Cf. BEAUGÉ (T), *dictionary of public procurement*, Afnor, 2007, op cit, P 85.
49. Article 6 paragraph 1 of the aforementioned Decree no. 2018/355.
50. First point, paragraph 2 of article 6 of the aforementioned decree no. 2018/355.
51. Article 5 of the 2018 code, definition (q) on the threshold of order letters; Article 9 of the same code on the thresholds of competence of the procurement commissions and Articles 27 to 31 on the thresholds of competence of the central procurement control commissions.
52. It "*sets the thresholds for purchase orders, letters of order, amendments, start-up advances, subcontracts and sub-contracts, and the rate of contracts awarded under the over-the-counter procedure.*" See Point 12, Article 6 paragraph 2 of the aforementioned Decree no. 2018/355.
53. Point n° 2, article 6 paragraph 2 of the above mentioned decree n° 2018/355.
54. *Ibid*, Point No. 4 and Article 7 of the same decree on the authorization of the chairman of the board of directors.
55. *Ibid*, Item No. 11.
56. Articles 28 and 127 of the former Public Procurement Code of 2004.
57. Article 50 of the Cameroonian Code of 2018 states to this effect that MINMAP: "*(...) has the powers to authorize exceptional procedures*"; Or the Prime Minister before the establishment of MINMAP in 2011. See Article 160 of the 2004 Code, cited above: "*the authority in charge of public procurement is the **Prime Minister**. As such, he has all the powers and duties conferred on him by the code, particularly with respect to visas, **authorization of exceptional procedures (...)***".
58. These are special procedures that apply only in cases restrictively provided for by market regulations. They partly derogate from the common principles generally governing ordinary procurement procedures and include in particular: competitive procedure with negotiation, direct negotiated procedure with prior publication, negotiated procedure without prior publication, small-value contracts, joint or adapted contracts, design-build contracts (V. Title VII, sub-section 1 relating to design-build contracts, of decree n° 2018/1075 of December 3, 2018 relating to the regulatory part of the public procurement code, relating to the rules applicable to certain types of contracts in France); V. also, articles 64, 68, 70 (to mention only these) of the Cameroonian code of June 20, 2018 on other types of contracts.
59. The qualification of *limited competition* relates to the procedure by mutual agreement (Cf. DICKA (J-E), *La passation des marchés publics au Cameroun, Mémoire pour l'obtention du master recherche, Droit public, Année académique 2016-2018, Université de Ngaoundéré, P 34.*); The awarding of contracts by mutual agreement is also a case of an exception procedure. See Proceedings of the IFAD (International Fund for Agricultural Development) Colloquium on Procurement Guidelines, August 2009, P 31.
60. Point No. 7, Article 6 paragraph 2 of Decree No. 2018/355, cited above.
61. According to Article 50, paragraph 1 of Decree No. 2018/366, the Public Procurement Code, MINMAP: "*(...) pronounces sanctions on the perpetrators of malpractices (...)*".
62. Point n° 7, article 6 paragraph 2 of the aforementioned decree n° 2018/355.
63. MESSENGUE AVOM (B), *La gouvernance des marchés publics au Cameroun*, Les éditions le Kilimandjaro (EDLK), Yaoundé, 2013, PP 115, 118 and 121.
64. "*Actors Guilty of Fraud and Corruption,*" see *Ibidem.* , P 57.
65. Point n° 8, article 6 paragraph 2 of the aforementioned decree n° 2018/355.
66. *Ibid*.
67. Point n° 9, article 6 paragraph 2 of the aforementioned decree n° 2018/355.
68. Repealed decree, which created, organized and operated public procurement commissions.
69. Article 160 of Decree No. 2004/275, which stipulated that: "*the public procurement authority (...) has all the powers and duties conferred on it by the code, in particular with regard to (...) and **arbitration in the event of disputes or appeals by tenderers***".
70. BIAKAN (J), *Droit des marchés publics au Cameroun: Contribution to the study of public contracts*, l'Harmattan Cameroun, 2011, Preface by Magloire ONDOA, P 11.
71. Item No. 10.
72. Committee for the Review of Recourse Resulting from Public Procurement.
73. Article 5, definition (j) and article 49 of decree no. 2018/366 on the above-mentioned public procurement code.

74. Technical support body placed with the project owner or delegated project owner to intervene during the procurement phase and ensure that the best offer is the one that complies with the rules and principles of the regulations on public enterprise contracts.
75. Paragraphs 1 and 2 of article 11 of the aforementioned Decree no. 2018/355.
76. Articles 14 to 19 of the repealed decree No. 2012/074 on the creation, organization and operation of public procurement commissions set out the broad power of MINMAP in the appointment of certain members, chairmen and secretaries of the commissions, who are placed near all public authorities (State, CTD, public establishments and enterprises).
77. Article 17 paragraph 1 of the aforementioned Decree no. 2018/355 of June 12, 2018 on the regulation of corporate markets.
78. Ibid. or article 8 paragraph <sup>1</sup> of the decree of 20 June 2018 on the above-mentioned public procurement code.
79. Article 8 paragraph 1 (point n° 2) of Decree no. 2018/355, *ibidem*.
80. Article 19, *ibid*.
81. Article 7 (point n° 3), Article 8 paragraph 1 (point n° 2) and Article 2, *ibidem*.
82. Articles 20 and 22, *ibid*.
83. DICKA (J-E), La passation des marchés publics au Cameroun, op cit, PP 7-8.
84. Both in the 2004 code and in the June 20, 2018 code.
85. These include *framework agreements, multi-year or multi-stage contracts* and *set-asides*. Cf. articles 27 to 30 of decree no. 2018/355 relating to public enterprise contracts or articles 65 to 70 of decree no. 2018/366 on the public procurement code.
86. Paragraph 3 of article 23 of the aforementioned decree relating to public enterprise contracts.
87. Article 59 (paragraphs 1, 2 and 3 of the Market Code of June 20, 2018).
88. Article 41 paragraph 2 of the aforementioned Decree no. 2018/355.
89. Terms and conditions that it sets itself in the bidding documents in accordance with the structure and content of the standard bidding documents, since it is vested with the broadest powers.
90. Article 23 paragraph 1 (e), of Decree No. 2004/275.
91. Article 6 paragraph 4 of the same decree.
92. Article 69 of Decree no. 2018/355 states to this effect: "*the Board of Directors shall set the maximum amount of benefits eligible for the listing application procedure, which may not exceed the ceiling of FCFA 50,000,000 (fifty million), unless the Board of Directors grants a special dispensation*".
93. Order 023/CAB/PM of 02 February 2011.
94. LINDITCH (F), *Le droit des marchés publics*, Paris, Dalloz, 4th edition, 2006, P 39.
95. Citing Article 28 of the Code of August <sup>1</sup>:2006.
96. Article L 2123-1 of Order no. 2018-1074 of November 26, 2018 on the legislative part of the public procurement code.
97. As is the case for independent observers and auditors.
98. See article 70 paragraph <sup>1</sup> of the aforementioned decree no. 2018/355.
99. GUIMDO DONGMO (B-R), *Course in Public Procurement Litigation*, Professional Master's Degree, University of Yaounde II-Soa, 2015/2016, unpublished.
100. Talking about the procurement phase as a gateway to public procurement contracts. Cf. DICKA (J-E), La passation des marchés publics au Cameroun, op cit, P iv.
101. See articles 63-66 of decree n° 2004/275 cited above.
102. "*Subcontracting is a normal way of carrying out works contracts and is encouraged by the public authorities in order to promote access to public procurement for SMEs*. See BIAKAN (J), *Droit des marchés publics au Cameroun: Contribution à l'étude des contrats publics*, op cit, P 83.
103. Article 86 paragraph 1 of Decree no. 2018/355, referred to above.
104. According to paragraph 3 of the same article 86 above: "*subcontracts are contracts by which the holder of a contract assigns to third parties the performance of part of that contract*".
105. Article 88 of the aforementioned Decree No. 2018/355.
106. Article 6 (4) already cited above.
107. The final bond may not be less than 2% and not more than 5% of the initial amount, plus any additional amounts, if applicable. Cf. article 90 (1) of decree no. 2018/355 and 68 (1) of decree no. 2004/275.
108. The holdback may not exceed 10% of the initial contract amount plus the amount of any endorsements. Cf. Article 90 (2) of Decree no. 2018/355 and Article 68 (2) of Decree no. 2004/275.
109. Paragraph 3 of article 90 of the above-mentioned decree no. 2018/355.
110. Article 92 (1) of the same decree.

111. This measure, although innovative, is not the prerogative of public companies, especially since the new code of June 20, 2018 (Articles 90 and 141 (1) and (2)) also provides for it for the execution of contracts of other public bodies.
112. The new code has also adopted this measure of the decree on the markets of public enterprises and has adjusted it in paragraph 8 of its article 90.
113. Who was the only one in a position to exercise it before the new legislation and regulations on public companies came into force.
114. Article 18 of the aforementioned decree n° 2018/355.
115. <sup>115</sup> Point n° 8 of article 9 of the same decree.
116. Point No. 7 of Article 7 of the same decree.
117. In particular, periodic or unannounced inspections on contracts in progress, a posteriori inspections for the analysis of the good behaviour of the work or of a supply on guarantee and sends reports on these to the Board of Directors; in the exercise of this control mission, it receives copies of all the documentation generated by the execution of the services.
118. According to the definition a) of article 5 of decree no. 2018/355, the independent auditor is a: "*a firm of established reputation recruited by the body responsible for regulating public procurement contracts to carry out the annual audit of contracts*".

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