



# GOVERNMENTAL PROCUREMENT IN LATIN AMERICA

**1<sup>ST</sup> EDITION**

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# **GOVERNMENTAL PROCUREMENT IN LATIN AMERICA**

**A LOOK AT LATIN AMERICAN  
GOVERNMENTAL PROCUREMENT**

**1<sup>ST</sup> EDITION**

**LLOREDA • CAMACHO & CO**

# EDITORIAL

Governmental procurement may be crucial to enter or make a name in a new market in LATAM and the Caribbean region. The region's governments are key players in each economy and, for 2024, are embracing essential challenges that demand private-public collaboration on infrastructure, information technology, healthcare, and renewables energies sectors, to name some of the more active industries for the region.

We are pleased to present the Governmental Procurement Regional Guide (the "Guide") with the aim of providing a general overview of the opportunities and challenges to contract with governmental entities in 14 jurisdictions, covering Argentina, Brazil, Chile, Costa Rica, Colombia, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Paraguay, Peru, and Uruguay.

Through the Guide, you will obtain strategic insights from legal experts that will enable you to understand the state's role in the market and the main requirements to be a governmental contractor. Moreover, you will find the incentives for governmental procurement, the way to access governmental information, and the main selection mechanisms applied for public procurement in each of the referred jurisdictions.

Some of the most renowned lawyers of some of the best well-known law firms in each jurisdiction have written each chapter of this publication, to whom we are especially grateful for their participation and contributions.

The Guide is part of Lloreda Camacho's regional publications, a multijurisdictional project aimed to make the first contact with a foreign market in LATAM and the Caribbean and the result of a collaboration project with the most outstanding legal firms of the region that will be available to further advise your businesses. If you are interested in knowing other of our publications, such as LATAM FINTECH, please visit our website: <https://lloedacamacho.com/en/latam-fintech-regulation-3rd-edition/>



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**STATE  
CONTRACTING IN  
LATIN AMERICA**

**1<sup>ERA</sup> EDITION**

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**A LOOK AT LATIN  
AMERICAN  
GOVERNMENTAL  
PROCUREMENT**

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■ ARGENTINA  
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## ARGENTINA

# O'FARELL STUDIO



Jorge Muratorio



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### 1. THE ROLE OF THE STATE IN THE MARKET

#### **A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?**

In Argentina, public procurement represents approximately 8% of the Gross Domestic Product (GDP). In turn, public procurement accounts for approximately 15% of the country's total expenditure.

The Argentine government has no restrictions as to the goods and services it may contract. It is also responsible for the execution of public works. Each entity's procurement will depend on factors such as its specialty, competences, objectives, among others.

#### **B. ¿QUÉ PROYECTOS LLEVA A CABO WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/OR SELECTION) THAT STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?**

The Argentine State has pending bids for the concession of the Hydrovia (dredging and beaconing of a river route of 1.477 km); concessions of hydroelectric dams; concession of port terminals of the Port of Buenos Aires; concession of national corridors (sections of national routes); concession of long-distance bus terminal stations (Retiro, in the City of Buenos Aires); concessions of passenger and freight railroad transportation and/or new authorizations in the implementation of the open access modality to the National Railroad Network, among others.



## 2. STATE CONTRACTORS

### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR ARE THE CONTRACTORS LIMITED TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?**

It is possible that in the procurement of goods, services or works, foreign persons may be accepted as bidders. In this case, it is necessary for the contracting entity to qualify the procurement as an international bidding. This happens when it is convenient by virtue of the characteristics of the object of the procurement, or the complexity of the service. In this case, the call for bids may be extended to interested parties and bidders from abroad, considering as such those who have their main place of business abroad and do not have a duly registered branch office in Argentina.

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

In the national jurisdiction, in the case of goods and services, the foreign bidder is required to obtain a pre-registration in the Supplier Information System (SIPRO). In the case of public works, the foreign bidder must be registered in the National Register of Suppliers, in the category corresponding to foreign suppliers.

As regards the documentation required to prove its capacity (such as corporate documentation, registration with the tax administration body, among others), the foreign bidder is required to submit the equivalent documentation in its country of origin.

In addition, all documentation submitted must be in Spanish. In the event that documentation is submitted in another language, it must be accompanied by the corresponding translation made by a certified translator.

Then, each provincial jurisdiction has its own procurement rules, most of which follow similar criteria.

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO PERFORM CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

Once the foreign bidder is awarded the bid, generally, it must register the company in Argentina, which may happen through the incorporation of a branch. That is to say, although it is possible for the foreign bidder to participate in the bidding process, in case it is awarded the contract, it must establish a representative office of the company in Argentina.

### **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

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Yes, at the national level, in the case of procurement of goods and services, bidders must be pre-registered in the Supplier Information System (SIPRO). However, the contracting entity is authorized to waive this requirement due to the particularities of the case. In the case of public works, in principle, all bidders must be registered in the National Register of Suppliers.

It should be noted that each provincial jurisdiction has its own procurement rules, most of which follow a similar criterion.

### 3. INCENTIVES FOR CONTRACTING WITH THE STATE

#### A. INDICATE SOME OF THE MAIN RIGHTS FOR ENTITIES THAT WANT TO CONTRACT WITH THE STATE.

State contractors have, among others, the right to the maintenance of the economic-financial equation, which seeks to ensure that the correlation existing at the time of the execution of the Contract, between the benefits to be provided by the parties, remains throughout its term, so that at the termination of the contract, each of them reaches the purpose expected with the contract.

In turn, the contractors have the right to the payment of the services rendered.

The contractor is also entitled to terminate the contract due to the Public Administration's fault.

In the event of force majeure, the Contractor is not liable for failure to comply with the obligations assumed.

It is even possible to mention that in the case of Public Private Participation Contracts, which represent an alternative to traditional contracts for goods and services and public works, it is established that the payment obligations assumed by the Contracting Party may be solved and/or guaranteed by means of: (i) The specific allocation and/or transfer of tax resources, goods, funds and any kind of credits and/or public revenues, with the corresponding authorization of the Congress of the Nation; (ii) The creation of trusts and/or use of existing trusts; (iii) The granting of bonds, sureties, guarantees by entities of recognized solvency in the national and international market and/or the constitution of any other instrument that fulfills the function of guarantee, provided that it is admitted by the current legislation.

### 4. STATE INFORMATION

#### A. DOES THE STATE CARRY OUT PERIODIC PLANNING TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL OBLIGATION OR IS IT A COMMON PRACTICE?

Yes, government entities usually plan the procurements to be carried out. This planning is taken into account when the budget law is approved each year, although there may be modifications later on.

## **B. ARE THE STATE'S NEEDS AND CALLS FOR ACQUISITIONS GENERALLY PUBLICLY ACCESSIBLE?**

Yes, the State has the obligation to publicize the public bids that are carried out. At the national level, in the case of goods and services, the call for bids must be published in the Official Gazette for a term of two (2) days, with seven (7) days in advance in the case that the call for bids is made in digital format.

It is also established that the call for bids must be published on the website of the governing body in matters of procurement -currently the National Procurement Office- or on the website of the electronic procurement system (COMPR.AR, available at <https://comprar.gob.ar/>), as from the day the call for bids is published in the Official Gazette.

National public works must also be published in the Official Gazette, with different advance notice, depending on the amount of the contract, and are also published on the CONTRAT.AR website, available at: <https://contratar.gob.ar/> .

## **C. PLEASE DESCRIBE WHAT TYPE OF ENTITIES CAN ACCESS INFORMATION RELATED TO STATE ACQUISITIONS, THROUGH WHAT MEANS, AND IF THERE ARE ANY ASSOCIATED COSTS WITH THIS PROCESS.**

All persons may access the information published in the Official Gazette, as well as in the COMPR.AR and CONTRAT.AR platforms.

Both are publicly accessible and free of charge:

- COMPR.AR (Electronic public procurement portal): <https://comprar.gob.ar/> .

- CONTRAT.AR (National Public Works electronic contracting portal): <https://contratar.gob.ar/> .

## **5. SELECTION MECHANISMS**

### **A.WHAT CRITERIA DOES THE STATE USE TO SELECT ITS CONTRACTORS?**

At the national level -and the same happens in the provinces- as a general rule, contracting entities must select their contractors through the public bidding procedure, which requires the award to the most convenient offer, both in the case of goods and services, as well as in the case of public works.

In turn, in the case of goods and services, the regulation clarifies that the price, quality, suitability of the bidder and other conditions of the bid will be taken into account.

On the other hand, in the case of public works, it is mentioned that the economic offer must take into account the contracting capacity, the background and any other information tending to ensure the best conditions for the execution of the work.

There are exceptions that allow the selection of a bidder through private bidding or direct contracting.

## ARGENTINA

### **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE CONTRACTING STATE ENTITY?**

In the case of public bidding, each procurement document may determine how the most suitable bid will be determined, for example, through the application of polynomial formulas. Depending on the subject matter of the procurement, different criteria may be considered when determining the most suitable bid.

In some cases, it is possible that the procuring entity carries out a direct contracting procedure, for example, when there are duly accredited reasons of urgency or emergency.

In turn, State enterprises and companies (about 45 at the national level) are governed by their own contracting regime. However, they must respect the general principles of public contracting and management of public funds, such as legality, equality, concurrence, transparency, publicity, effectiveness and efficiency.

### **C. ARE THERE BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN A FOREIGN ENTITIES ACCESS THESE BENEFITS?**

It is established that an offer involving goods of national origin will have preference over the others. A “good of national origin” is understood as that which has been produced or extracted in the territory of the Argentine Republic, provided

that the cost of the nationalized raw materials, inputs or imported materials does not exceed forty percent (40%) of its gross production value. In such case, a foreign bidder offering goods of national origin could enjoy the preference established in the rule.

In some cases, for example for the award of public works exclusively for the construction of housing and public buildings of a certain amount, it is provided that the award must be made to a local company, which qualifies as Micro, Small and Medium Enterprises, and which offers goods or works of national origin. Public works of national origin are understood as those in which at least fifty percent (50%) of the materials used meet the requirements to be considered goods of national origin, and the company must be a local company with domestic capital.

In turn, in principle, the contracting of services and consultancy services must be contracted in favor of local companies with domestic capital, which must have their management effectively located in the country, in accordance with the principle of economic reality.

In the case of Public Private Participation Contracts, it is established that, in principle, the bidding documents must promote in their guidelines for the selection of the successful bidder, criteria that determine comparative advantages in favor of local companies over foreign companies and over micro, small and medium-sized companies.

The Argentine State may enter into agreements with other countries whereby it grants, in principle, equal treatment

to foreign bidders of that country, provided that there is reciprocity. For example, an agreement has been signed with Chile in 2019.

### **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS REQUIRING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

At present, the electronic procurement system is in force at the national level, through the COMPR.AR portals for goods and services (<https://comprar.gob.ar/>), and CONTRAT.AR for public works (<https://contratar.gob.ar/>).

Consequently, the submission of documents in paper format is not valid.

However, the constitution of a domicile in Argentina is usually required.

At the provincial level, it is worth mentioning that only some provincial jurisdictions have public procurement platforms.

## **6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES**

### **A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Yes, in Argentina a bid may be submitted by several persons who must assume the commitment to form a Joint Venture (Unión Transitoria) in case they are awarded the contract.

Our regulations establish that there is a joint venture contract when the parties come together for the development or execution of specific works, services or supplies, within or outside the Republic.

In the case of public works, the members of a joint venture are required to assume the express commitment of primary, joint and unlimited liability of all of them, for the fulfillment of all obligations arising from the selection procedure and the contract.

They must also assume, among other commitments, that of maintaining the Joint Venture in force for a term not less than that established for the fulfillment of all the obligations arising from the Contract.

It is established that those who present themselves as members of the joint venture may not present themselves individually.

### **B. CAN MULTIPLE INTERESTED PARTIES JOINTLY PERFORM A CONTRACT IN FAVOR OF A STATE ENTITY?**

Yes, if they have bid under the commitment to form a joint venture, and once awarded, they have formed a joint venture.

## ARGENTINA

### **C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?**

In the case of public works, at the national level, those interested in submitting a joint proposal must submit an affidavit stating: (i) The commitment to be legally constituted as a Joint Venture, in the event of being awarded the contract, and prior to the signing of the Contract; (ii) The express commitment of primary, joint and unlimited liability of each and every one of the persons grouped together, for the compliance of all obligations arising from the selection procedure and the Contract; (iii) The commitment to maintain the Joint Venture in force for a term not less than that established for the performance of all obligations arising from the Contract; (iv) The commitment not to introduce modifications in the statutes of the Joint Venture, or in those of the legal entities that integrate it, that would alter the liability without the prior approval of the Employer; (v) The commitment to act exclusively under the unified representation in all aspects related to the Contract.

In the case of goods and services, what is established in each particular bidding document shall be required, which shall be similar to what is required in the case of public works.

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## BRASIL

# CESCON, BARRIEU

## 1. THE ROLE OF THE STATE IN THE MARKET

### A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?

The purchasing power of the Brazilian state has an impact on the country's development and can even be seen from the perspective of public policy, since it redirects the axis of government organization from law to policy.

Brazilian government figures updated in 2022 show that public procurement accounts for around 12% of GDP (Gross Domestic Product).

### B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/OR SELECTION) THAT STAND



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Lucas Gigliolo

### OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?

In terms of robustness, the New PAC (Growth Acceleration Program) of the federal government stands out, which foresees investments of R\$ 1.7 trillion between 9 axes, namely: (i) efficient and sustainable transport; (ii) including social infrastructure; (iii) sustainable and resilient cities; (iv) water for all; (v) digital inclusion and connectivity; (vi) energy transition and security; (vii) innovation for the defense industry; (viii) education, science and technology and; (ix) health.

## 2. STATE CONTRACTORS

### A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR ARE THE CONTRACTORS LIMITED

## **TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?**

There is no prohibition on the participation of foreigners in Brazilian public procurement, and the Federal Law No. 14,133 of 2021 prohibits the establishment of differences between Brazilian and foreign companies, although it is possible to establish a margin of preference for goods and services produced in Brazil.

## **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

What is required is the presentation of the respective translations into Portuguese, as well as, in the event that they are successful in the bid and are not yet authorized in the country, the registration with the competent entity in Brazil.

## **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO PERFORM CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements other than those mentioned above.

## **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

In Brazil, there is the SICAF - Sistema de Cadastro de

Fornecedores (Supplier Registration System), which is free to register. Although it is not a mandatory condition for contracting with the Administration, it acts as a gateway, so that it is possible to register proposals and participate in the process. Thus, it can be said that registration with SICAF is mandatory for participation in [compras.gov.br](http://compras.gov.br).

It is important to note that even in cases where the process takes place outside the scope of [compras.gov.br](http://compras.gov.br), the SICAF can be used to check the qualification conditions, so it is recommended to register with the SICAF.

## **3. INCENTIVES FOR CONTRACTING WITH THE STATE**

### **A. INDICATE SOME OF THE MAIN RIGHTS FOR ENTITIES THAT WANT TO CONTRACT WITH THE STATE.**

The right to receive payment, as well as the right to financial economic rebalancing of contracts.

In addition, the new law on tenders and contracts provides for the need to present the risk matrix between the parties in all administrative contracts.

## BRASIL

### 4. STATE INFORMATION

#### **A. DOES THE STATE CARRY OUT PERIODIC PLANNING TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL OBLIGATION OR IS IT A COMMON PRACTICE?**

Federal Law No. 14,133 of 2021 inserts planning as a principle to be observed in public procurement. Although the previous system already demonstrated the need for internal organization and rational use of public resources, with the publication of Federal Law No. 14,133 of 2021' express forecast, the issue became more evident.

In public procurement, the planning must be compatible with the annual hiring plan, whenever drafted, and budget laws. The budget laws concern the PPA (Multiannual Plan), covering the period of 4 years, the LDO (Budget Guidelines Laws), its amendments, the LOA (Annual Budget Law) and additional credits.

#### **B. ARE THE STATE'S NEEDS AND CALLS FOR ACQUISITIONS GENERALLY PUBLICLY ACCESSIBLE?**

Yes. Publicity and transparency are also principles explicitly provided for in Federal Law No. 14,133 of 2021.

In addition to the provision in the norm of public contracts, it is worth mentioning the existence of the Law of Access to Information, Federal Law No. 12,527 of 2011, which also recommends the disclosure of information related to the management of resources.

#### **C. PLEASE DESCRIBE WHAT TYPE OF ENTITIES CAN ACCESS INFORMATION RELATED TO STATE ACQUISITIONS, THROUGH WHAT MEANS, AND IF THERE ARE ANY ASSOCIATED COSTS WITH THIS PROCESS.**

The information is public, free and made available by electronic meio, facilitating access by any interested party.

### 5. SELECTION MECHANISMS

#### **A. ¿WHAT CRITERIA DOES THE STATE USE TO SELECT ITS CONTRACTORS?**

The Brazilian Federal Law No. 14.133 of 2021, establishes in the sections of its article 62 that qualification - considered to be the phase of the bidding process in which the set of information and documents necessary and sufficient to demonstrate the bidder's ability to carry out the object is verified - takes place through legal, technical, fiscal, social and labor and economic-financial analysis.

#### **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE CONTRACTING STATE ENTITY?**

No. What can happen is that due to the complexity of the object, the requirements contained in the public notice, especially of a technical nature and economic and financial capacity, can be more or less restrictive.

In order to be competitive and obtain the most advantageous bid, the Administration must impose requirements that are

compatible with the object being bid on, so as to ensure that it does not impose unnecessary barriers on interested parties, while at the same time filtering out capable bidders from adventurous ones.

**C. ARE THERE BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN A FOREIGN ENTITIES ACCESS THESE BENEFITS?**

As mentioned in item 2.a above, it is possible to establish a differentiated margin of preference for domestic manufactured products. The idea is that the value of the margin of preference is sufficient to equalize the competitive asymmetry that leads to differences between the best foreign offer and the best domestic offer.

**D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS REQUIRING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

Federal Law No. 14,133 of 2021 seeks to improve the contracting carried out by electronic means. In accordance with its article 12, item VI, the acts will preferably be digital, allowing them to be produced, communicated, stored, and validated by electronic means.

**6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES**

**A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Yes. Brazilian Federal Law No. 14,133 of even provides for the use of a Consortium as a rule.

**B. CAN MULTIPLE INTERESTED PARTIES JOINTLY PERFORM A CONTRACT IN FAVOR OF A STATE ENTITY?**

In the case of more complex objects, it is possible to predict the integrated or semi-integrated contracting.

The integrated contracting consists in the rule of execution of works and engineering services that integrates the responsibilities for the preparation of the basic project and the execution of the work.

In turn and intuitively, the semi-integrated contracting, the contractor assumes the responsibility of elaborating and developing the executive projects, perform works and engineering services, provide goods, or provide special services and perform assembly, testing, pre-operation, and other operations necessary and sufficient for the final delivery of the object.

## BRASIL

### **C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?**

In the case of a consortium, the companies must sign a public or private commitment to set up a consortium and must appoint the leader.

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■ CHILE

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## CHILE

# CAREY

### 1. THE ROLE OF THE STATE IN THE MARKET

#### A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?

The role of the State is mainly focused on the acquisition of goods and the provision of services required for the performance of its duties. In addition, the State finances private sector participation in the execution, repairment, conservation and/or exploitation of public works, or adjudicates concessions for the execution and administration of such projects.

In this context, it is worth mentioning that public acquisitions amount to 4.9% of the country's Gross Domestic Product; that is, more than USD 15,023 million in 2022 . It is expected that the Public Works Concession contracts in force in 2023 will reach an investment of USD 25,397 million<sup>24</sup>.



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#### B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/OR SELECTION) THAT STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?

Currently, one of the most ambitious and interesting projects that the Chilean State is developing corresponds to the construction of a new subway line in Santiago, which already presents an advance of 9.5% of the total project and is expected to be put into service in 2028. Additionally, the State awarded the concession for the Bicentennial Cable Transport project, which contemplates the construction of a new public transport system, planning the transportation of approximately 3,000 passengers per hour.

In addition to this project, the Chilean State is developing and strengthening the expansion and improvement of the national hospital network through the construction and

<sup>23</sup> Public Account of the "Public Procurement and Public Contracting Information System", year 2022.

<sup>24</sup> Public Account of the Ministry of Public Works, year 2022.

installation of at least six new health facilities in the country.

Furthermore, the Chilean State announced the “Trains for Chile” project, which contemplates a total investment of USD 3,820 million and is intended to connect the Valparaíso Region with Santiago by rail. This project will mainly benefit rural areas, generating a positive impact, boosting trade and revitalizing those areas.

## 2. STATE CONTRACTORS

### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR ARE THE CONTRACTORS LIMITED TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?**

Yes, the Chilean State accepts proposals and enters contracts with foreign entities. In this regard, it is worth noting that in public procurement processes - both under Law No. 19,886 and the Law on Public Works Concessions - individuals or legal entities, Chilean or foreign, may participate, as long as they comply with the corresponding legal requirements and those established in the respective bases.

Exceptionally, in the Public Works Concession system, the participation of foreign companies or consortiums in which they participate may be prohibited by an ad-hoc resolution by the General Director of Concessions<sup>25</sup>.

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

Under the provisions of Law No. 19,886 and the Law on Public Works Concessions, there are no additional requirements for foreign bidders to participate in contracting proceedings with the State.

In this regard, there is equality of conditions between foreign and domestic bidders. Thus, regardless of whether those who wish to contract with the State are nationals or foreigners, such entities or individuals must fulfill the same legal requirements and those established in the respective bases for bidding.

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO PERFORM CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

No. Under the provisions of Law No. 19,886 and the Law on Public Works Concessions, foreign contractors are subject to the same requirements established by law for national suppliers.

However, Law No. 19,886 establishes the possibility that the bidding entity may, in the respective bases, require at the time of the adjudication, the granting and constitution of a mandate with sufficient power of representation or the constitution of a Chilean company or agency of a foreign

<sup>25</sup> Article 12 of Decree No. 75 of 2004 of the Ministry of Public Works, which establishes the Regulations for Public Works Contracts.

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company, as corresponds, with which the contract will be executed and whose object must include the execution of the contract.

The above is applicable only to those contracts whose object is the acquisition of goods or the rendering of services that the successful bidder is obliged to deliver or render in a successive manner over time.

Now, notwithstanding the foregoing, foreign entities are generally required to submit, among other information, the documents - duly legalized - evidencing their incorporation in accordance with applicable law and the instrument stating the power of attorney of the legal representative. The above, indeed, is established in the Law on Public Work Concessions.

### **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

Regarding the contracting proceedings conducted under Law No. 19,886, there is an Official Electronic Register of Contractors (“Register”), under the responsibility of the Public Purchasing and Contracting Directorate (“Chile Compra”)<sup>26</sup>. Said Registry is publicly accessible and its registration in the basic modality is free of charge.

Although there is no legal obligation to be registered in order to bid and participate in the process, it is recommended to do so since, in accordance with current regulations<sup>27</sup>, the contracting public entities may require suppliers to be listed

in the Register in order to enter into final contracts.

In the case of the Public Works Concessions System, there is a Registry of Contractors of the Ministry of Public Works (“MOP”), registration that allows bidders to participate in the bidding processes conducted by the MOP<sup>28</sup>. This registry consists of the Registry of Major Works and the Registry of Minor Works<sup>29</sup>, which is overseen by the General Directorate of Public Works. The registration is valid for one year, after which an update request must be submitted.

Please consider that the applications for registration of foreign legal entities in the Register of Contractors of the MOP must have an accredited representative in Chile, individuals who hold a professional degree awarded by a foreign university with an academic level equivalent to the national level and recognized in Chile, and legal entities in which a natural person who is in the latter condition has a shareholding. In the case of foreign corporations, for the purposes of registration, they must also comply with the rules determined for them in the national regulations.

## **3. INCENTIVES FOR CONTRACTING WITH THE STATE**

### **A. INDICATE SOME OF THE MAIN RIGHTS FOR ENTITIES THAT WANT TO CONTRACT WITH THE STATE.**

The Constitution assures all persons (including foreigners) the rights to economic freedom and non-discrimination in economic matters by the State, rights that are protected by effective actions before independent courts<sup>30</sup>.

<sup>26</sup> In addition, there may be other official registers of suppliers, depending on the good or service that the State intends to acquire.

<sup>27</sup> This is established in Article 16 of Law No. 19,886, in addition to Article 66 of the corresponding regulations.XS

<sup>28</sup> Article 69 of Decree No. 75 of 2004 of the Ministry of Public Works, which establishes the Regulations for Public Works Contracts.

<sup>29</sup> Article 5 of Decree No. 75 of 2004 of the Ministry of Public Works, which establishes the Regulations for Public Works Contracts.

In turn, Law No. 18,575, Organic Constitutional Law of General Bases of the Administration, establishes the principles that will govern all bidding procedures<sup>31</sup>. Thus, according to this law, those procedures will be subject to the principles of free concurrence of the bidders to the administrative call and equality before the bases that govern the contract. By its nature, this norm makes these principles applicable to the entire State Administration, governing all the processes that are conducted.

Additionally, Law No. 19,886 guarantees the following basic principles: free participation of bidders, equality, transparency and probity; forbidding any kind of arbitrary discrimination during public contracting processes. There is also a judicial claim procedure before a specialized court for actions or omissions by the public bidding entity that are deemed illegal by the bidders, and that occur within the course of a specific bidding process.

Additionally, state entities are obliged to have the necessary resources to pay for the goods or services to be supplied or provided by a supplier.

In the case of the Public Works Concession System, there are certain mechanisms to ensure the economic balance of the contract. In this sense, and in the case of certain events established by law or the respective bases, the concessionaire may request an economic compensation, the extension of the concession term, the rights thereof or modifications to the economic regime of the contract.

In addition, the Concessions Law ensures access to justice in the event of possible illegal acts or omissions that occur in the bidding process or operation of a concession, either through a judicial or arbitration claim (depending on the system to which the concessionaire is ascribed).

## 4. STATE INFORMATION

### **A. DOES THE STATE CARRY OUT PERIODIC PLANNING TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL OBLIGATION OR IS IT A COMMON PRACTICE?**

Yes. According to the provisions of Law No. 19,886, the State Administration entities are legally obliged to prepare an “Annual Procurement Plan”, with the goods and/or services that are expected to be acquired each year. Based on these plans, Chile Compra prepares an “Annual General Procurement Plan for the Public Sector”, of a referential nature.

Regarding the Public Works Concessions System, the Ministry of Public Works, together with the General Directorate of Concessions, prepares an annual concessions plan with a five-year projection.

### **B. ARE THE STATE’S NEEDS AND CALLS FOR ACQUISITIONS GENERALLY PUBLICLY ACCESSIBLE?**

Yes, there is a constitutional and legal obligation for state entities to publish their acts, resolutions, grounds, and procedures. Moreover, the laws that regulate contracting with

<sup>30</sup>Article 19, paragraphs 21 and 22 and Article 20 of the Constitution.

<sup>31</sup>Article 9 of Law No. 18,575 Constitutional Organic Law of General Bases of the Administration.

<sup>32</sup>Article 18 of Law No. 19,886 and Article 14 of the Regulations of the Law on Public Works Concessions.

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the State require that administrative contracting procedures be carried out through channels that ensure their publicity<sup>32</sup>.

Due to the above, the “Public Works Concessions” and the “Public Procurement and Public Contracting Information System” (“Public Market”) websites publish the announcements of the respective bidding procedures and, likewise, publish the other acts issued during the processing of such bidding procedures (questions and answers to the bidding bases, evaluation of bids, results of the bidding, among others).

### **C. PLEASE DESCRIBE WHAT TYPE OF ENTITIES CAN ACCESS INFORMATION RELATED TO STATE ACQUISITIONS, THROUGH WHAT MEANS, AND IF THERE ARE ANY ASSOCIATED COSTS WITH THIS PROCESS.**

Any interested party may obtain information related to State contracting procedures, free of charge, by accessing the “Public Market” and “Public Works Concessions” websites, as shown in the links below:

- <https://www.mercadopublico.cl/Home/>
- <https://concesiones.mop.gob.cl/Paginas/default.aspx>

## 5. SELECTION MECHANISMS

### **A. WHAT CRITERIA DOES THE STATE USE TO SELECT ITS CONTRACTORS?**

Firstly, it is important to mention that, by express legal mandate, the State Administration entities are obliged to

respect the principles of equality and free competition of bidders<sup>33</sup>. Therefore, the requirements or selection criteria established in their contracting processes shall be objective and shall not be arbitrarily discriminatory.

In this regard, Law No. 19,886 establishes that public contracting procedures shall establish conditions or selection criteria that ensure the optimal match between all the benefits of the good or service to be acquired and all its associated costs, present and future<sup>34</sup>. Therefore, the bidding conditions may establish (i) criteria for the admissibility of bids; (ii) criteria for the evaluation of admissible bids. On that basis, the contract shall be awarded to the admissible bid that obtains the highest score.

In any case, it is important to consider that, although the bidding entities may use different criteria for the admissibility or evaluation of bids, such conditions shall be aimed at effectiveness, efficiency, quality of the goods and services to be acquired, and savings in their procurements<sup>35</sup>.

In this sense, the main criteria used by the bidding entities are: the economic<sup>36</sup> and/or technical aspects of the bids, better delivery conditions of the products or services in terms of deadlines, and labor insertion policies, among other evaluable objective criteria.

On the other hand, in the Public Work Concessions System, bids shall be evaluated according to essentially technical and economic criteria, regarding the nature of the public work awarded and subjected to the specific conditions established by the Ministry of Public Works in the respective Bidding

<sup>33</sup> Article 9 of Law No. 18,575, which establishes the General Bases of State Administration.

<sup>34</sup> Article 6 of Law No. 19,886.

<sup>35</sup> Article 6 of Law No. 19,886.

<sup>36</sup> Please consider that, in accordance with Article 20 of the Regulations to Law No. 19,886, the economic factor cannot be the only criterion to be considered by the bidding entity to award a public contract.

Bases.

## **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE CONTRACTING STATE ENTITY?**

Notwithstanding the above answer, additional requirements may be included in public procurement processes, which, in general, will award a higher score to those bidders that comply with such requirements (for example, previous experience, and financial capacity, among others). However, such requirements must be always objective, and in no case the requirements can be discriminatory.

## **C. ARE THERE BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN A FOREIGN ENTITIES ACCESS THESE BENEFITS?**

In general, local and foreign bids are evaluated under the same criteria and, in principle, there are no special benefits for local bidders.

Nevertheless, please consider that in contracting procedures under Law No. 19,886:

i. The bidding entity may require the awarded bidder to grant a mandate with sufficient power of representation or to incorporate a Chilean company or agency of a foreign company for the purpose of executing the contract awarded<sup>37</sup>.

ii. The execution of service agreements with foreign legal entities to be executed outside the national territory may be contracted directly or by private bidding procedure<sup>38</sup>.

In the Public Works Concessions system, the participation of foreign companies or consortiums in which they participate may be prohibited, exceptionally, and by an ad-hoc resolution by the General Director of Concessions<sup>39</sup>.

## **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS REQUIRING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

In public procurement procedures carried out under Law No. 19,886, the general rule for the development of contracting processes is via electronic channels<sup>40</sup>. In this sense, and following this general rule, bids shall be submitted on the “Public Market” website. Furthermore, the resolutions related to the respective contracting process will be published on said website.

On the other hand, in the case of processes for the awarding of public works concessions the bidders must submit the required documentation physically, although the resolutions issued during the process are also published on the website.

In any case, it is recommended that even in procedures where bids must be submitted via electronic channels, legal and financial advice should always be sought, in order to submit a bid that complies with the requirements of the bidding conditions and be competitive.

<sup>37</sup>Article 4 of Law No. 19,886.

<sup>38</sup>Article 8 of Law No. 19,886.

<sup>39</sup>Article 12 of Decree No. 75 of 2004 of the Ministry of Public Works, which establishes the Regulations for Public Works Contracts.

<sup>40</sup>Exceptionally, the procurement procedures may be carried out on paper, according to the grounds set forth in Article 62 of the Regulations to Law No. 19,886.

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### 6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES

#### A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?

In public procurement procedures under Law No. 19,886, interested parties may jointly submit a bid – or execute a contract – under the figure of a “Temporary Union of Suppliers” (“Unión Temporal de Proveedores”) or “TUS”, unless the specific bidding bases prohibit the participation of TUS, exception that must be defined by an ad hoc resolution that considers the object of the bidding or the characteristics of the good or service to be acquired.

Please consider that the participation of bidders through a TUS does not require the incorporation of a different corporate vehicle, notwithstanding the possibility that a bidding entity may require it in a specific contracting process.

In the Public Works Concessions System, interested parties may participate jointly in a contracting process under the figure of a “Bidding Group” (“Grupo Licitante”). In the event that a Bidding Group is awarded a contract, it shall incorporate a corporate vehicle with the sole purpose of executing such contract (this obligation is required for all awarded bidders, whether they participate individually or jointly).

The purpose of this Guide is to analyze two main public procurement laws in force in Chile as of September 1, 2023: (i) Law No. 19,886 on Public Procurement (“Law No. 19,886”) and its Regulations and (ii) Decree No. 900 of 1996 of the Ministry of Public Works which defines the text of the Law on Public Works Concessions (“Law on Public Works Concessions”), and its Regulations. Please consider that, besides the aforementioned laws, there are other provisions regarding public procurement, depending on the specific type of the good or service to be acquired by the State (for example, the Telecommunications Law, the Law on Procurement of the Armed Forces, the Law of Electric Services, the Decree Law on the Pension System, among others). Given the specific nature of these laws and the scope of this Guide, we will focus only on the general rules initially indicated. Finally, please consider that a reform to the Law No. 19,886 was recently approved by the National Congress, but the Constitutional Court control is still pending. (Bill No. 14.137-05). The purpose of this bill is to improve the quality of public spending, increase the standards of probity and transparency, introduce circular economy principles in public purchases and improve the judicial claims procedure.

#### B. CAN MULTIPLE INTERESTED PARTIES JOINTLY PERFORM A CONTRACT IN FAVOR OF A STATE ENTITY?

Members forming a TUS or a Bidding Group may jointly execute the awarded contract by the State.

#### C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?

In general, bidders intending to form a TUS or a Bidding Group shall sign a document declaring their intention to participate jointly in a given public contracting process. In addition, the bidding bases could establish specific requirements for TUS or Bidding Groups.



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■ COLOMBIA  
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**Lloreda Camacho & Co.** has a strong practice in Public Law. Our team is well known for its deep understanding of the law and applicable regulations for the infrastructure sector, its practical approach to assessing and managing legal risks, its creativity in solving problems, and the insightfulness that the team contributes to each project. One of the major assets of our practice is that we work closely with our real estate and finance practice groups to provide an integrated approach to the main legal issues involved in infrastructure projects and public matters.

Our firm has steadily played a significant role in this practice area, working with high-profile clients, mainly in the infrastructure, telecom, oil, clean energies, and health/medical sectors. We counsel our clients in order for them to participate in contracting state projects.

We provide support at all stages of governmental procurement, from the preparation of the proposal to the execution of the contract. We have experience in the selection of contractors in Public Private Association (APP) projects and concessions for the implementation of public infrastructure.

We have stood out in large-scale projects such as the fourth and fifth-generations road concessions (4G and 5G), and the recent initiatives for the transportation infrastructure of Bogotá.

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# LLOREDA CAMACHO &CO



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## 1. THE ROLE OF THE STATE IN THE MARKET

### A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?

According to information from the Electronic System of Public Procurement, during 2022, acquisitions carried out by Colombian Governmental entities amounted to more than 157 trillion Colombian pesos, approximately USD \$38.27 billion. This figure corresponds to a percentage close to 13.3% of the country's Gross Domestic Product for the year 2022.

The Colombian State acquires all types of goods and services. There are no restrictions for Governmental entities to acquire specific goods and services. Depending on the specialization, functions, and objectives of each state entity, acquisitions are determined by the nature of their needs to be met.

### B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/OR SELECTION) THAT STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?

Currently, the Colombian State is executing interesting and ambitious projects, such as the structuring and construction of the first and second lines of the Bogotá City Metro, the implementation of the first vaccine factory in the country, the expansion of water treatment plants in the city of Bogotá, the modernization of airports serving the cities of Cali, Neiva, Buenaventura, and Cartagena, the acquisition of tools that will complement the Tsunami warning system, and the provision of public internet networks with free access for population centers and educational facilities located throughout the national territory.

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### 2. STATE CONTRACTORS

#### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR ARE THE CONTRACTORS LIMITED TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?**

Colombian Governmental entities accept proposals and enter into contracts with both national and foreign individuals and legal entities. The principle of public contracting is to choose the proposal that is most advantageous for the State, without distinguishing the nationality of the bidder as a selection criteria.

#### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements for foreigners that want to participate in selection processes opened by governmental entities in Colombia. Bidders must comply with the terms and conditions set forth in the bidding documents that govern the selection processes.

Thus, documents included in proposals from foreign entities may be available in languages other than Spanish and may have been issued by Governmental entities from States other than Colombia. The amounts to be included in certifications or financial statements may be in currencies other than the

Colombian peso. However, it is essential to consider that the documents will need to be officially translated into Spanish, include conversions on the amounts to Colombian pesos, and be apostilled if issued by Governmental entities from other States.

#### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO PERFORM CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

Yes. Although there is no requirement to incorporate any type of corporate vehicle for participation in public procurement processes, once a contract is awarded, contractors providing goods and services to Colombian Governmental entities should a corporate vehicle (e.g. a branch or subsidiary) for the performance of the awarded contract, considering that they will carry out permanent activities in the country. Thus, foreign legal entities will need to incorporate a corporate vehicle in the country or register an authorized branch to represent the foreign legal entity.

#### **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

As a general rule, bidders and contractors with the Colombian State must register in the Unique Registry of Bidders (RUP) for their proposals to be considered in public selection processes. The RUP is a national registry administered by the Chambers of Commerce of the country, and the procedures



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(registration, renewal, and updating) can be carried out virtually with chambers of commerce such as the one in Bogotá.

This requirement does not apply to foreign bidders who do not have a domicile or registered branch in the country. Additionally, registration is not required for bidders who contract with the State through certain selection mechanisms known as direct contracting and some modalities of abbreviated selection.

### 3. INCENTIVES FOR CONTRACTING WITH THE STATE

#### A. INDICATE SOME OF THE MAIN RIGHTS FOR ENTITIES THAT WANT TO CONTRACT WITH THE STATE.

The Colombian public procurement system includes provisions requiring budget availability to initiate a public bidding process by the Governmental contracting entities. This obligation translates into a contractual benefit for the performance of State contracts since it defines a budget for the performance of the contracts; therefore, if Governmental entities have payments allocated, they will have the necessary funds available.

Additionally, Governmental entities have obligations of publicity and planning, which allow their contractors and bidders to access information of interest to structure their proposals and/or conduct market studies.

Finally, as detailed in paragraph 6, public bidders and

contractors can submit proposals and execute contracts as plural structures, associating more than one entity or individual without the need to incorporate a corporate vehicle in Colombia.

### 4. STATE INFORMATION

#### A. DOES THE STATE CARRY OUT PERIODIC PLANNING TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL OBLIGATION OR IS IT A COMMON PRACTICE?

Yes. Governmental entities carry out multi-year and annual planning exercises (the latter being more specific) to contemplate the goods and services they need to acquire to meet their needs. These exercises are part of a legal obligation that includes the obligation of annually publishing a summary of the acquisitions that each entity intends to carry out, including the contractual objects and maximum budgets allocated to each contract.

#### B. ARE THE STATE'S NEEDS AND CALLS FOR ACQUISITIONS GENERALLY PUBLICLY ACCESSIBLE?

Yes. In accordance to the transparency principle, governmental procurement, the contracting entities publish information about their calls and contracts in progress on the Electronic System of Public Procurement (SECOP). On this platform, interested parties can access information on processes relevant to their sectors of the economy.

The information published on SECOP includes everything from pre-contractual studies to the entire procurement process, including observations and evaluations from the contracting public entity, as well as proposals from all participants, naturally including information on potential competitors.

### **C. PLEASE DESCRIBE WHAT TYPE OF ENTITIES CAN ACCESS INFORMATION RELATED TO STATE ACQUISITIONS, THROUGH WHAT MEANS, AND IF THERE ARE ANY ASSOCIATED COSTS WITH THIS PROCESS.**

The SECOP system is a publicly accessible virtual platform, and the information can be consulted by any interested party through the following link: <https://colombiacompra.gov.co/secop/secop>

Additionally, the Colombian State publishes datasets that facilitate the consultation of information on SECOP through the following link: <https://colombiacompra.gov.co/transparencia/conjuntos-de-datos-abiertos>

## **5. SELECTION MECHANISMS**

### **A. WHAT CRITERIA DOES THE STATE USE TO SELECT ITS CONTRACTORS?**

As a general rule, Governmental entities define their contractors based on price and quality criteria. Each entity establishes objective criteria in their calls for proposals to evaluate the price and quality of the submissions.

Exceptionally, for consultancy and oversight services, Colombian Governmental entities prioritize the quality as the main selection criterion, without considering price as a selection factor. Finally, there are state entities that are not governed by the public procurement regime, and the selection criteria applicable to their contracts are established in their contracting manuals.

### **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE CONTRACTING STATE ENTITY?**

These criteria may vary in calls for bids opened by Governmental entities that operate under a special contracting regime. Generally, this occurs when entities, despite being state-owned, are subject to private law because they compete with the private sector of the economy, such as in the provision of public services like electricity, lighting, water supply, and sanitation.

The application of these criteria is autonomously defined by the contracting entity. However, the National Public Procurement Agency, Colombia Compra Eficiente, has indicated recommendations for this purpose that are widely adopted by entities in the country.

In the specific case of the health sector, state social entities, which are public health service providers, are subject to a special contracting regime that exempts them from applying the public procurement regime and allows them to contract according to their own manual.

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### **C. ARE THERE BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN A FOREIGN ENTITIES ACCESS THESE BENEFITS?**

Yes, offers of goods and services of national origin may receive additional points and are considered as tie-breaker criteria. This condition can be proven by either a national or foreign bidder and consists of offering goods and/or services included in a register certifying them as of national origin. This origin corresponds to the manufacture of all or part of the goods in the country and/or the incorporation of goods and services manufactured in Colombia.

### **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS REQUIRING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

As a general rule, proposals to governmental entities are submitted through the electronic public procurement system, SECOP II. This platform is transactional and allows for the submission of proposals 100% virtually, including the execution of the eventual contract with the awarded bidder. Thus, there is generally no need to have a domicile or a team located in the country for the submission of a proposal to state entities. However, it is of utmost importance to have legal, technical, and financial advice that enables the submission of a well-prepared proposal.

## **6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES**

### **A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Yes. Colombian regulation include alternatives for submitting proposals as a Temporary Union (Unión Temporal), Consortium (Consortio), or promise of a future company (promesa de sociedad futura). Under these alternatives, interested parties do not need to incorporate a corporate vehicle to associate with other legal entities or individuals to submit proposals to the Colombian State or to perform the corresponding contract in case of awarding.

Temporary Unions and Consortiums are plural structures with no limit on the number of members, who share joint and several liability for the submission of the offer to the governmental entity, except for the payment of potential penalties during contract performance, which, in the case of Temporary Unions, will be solely the responsibility of the member that failed to fulfill the obligation allocated to the corresponding party. In the promise of future company, if the contract is awarded, there is an obligation to incorporate a corporate vehicle in the country.



## **B. CAN MULTIPLE INTERESTED PARTIES JOINTLY PERFORM A CONTRACT IN FAVOR OF A STATE ENTITY?**

Yes, under Temporary Unions and Consortiums, its members can jointly perform contracts in favor of state entities without necessarily incorporating a new corporate vehicle in Colombia. In cases where bidders opt for a promise of future company, or when the contracting rules require it, as is often the case in large infrastructure projects, the plural bidders must establish a corporate vehicle as a prerequisite before the execution of the awarded contract.

## **C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?**

Interested parties must sign an agreement that does not imply the incorporation of any type of corporate vehicle. Generally, public entities include in their contracting documents the format that establishes the general rules for participation through plural bidders.

## AUTHORS



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Carlos has been a member of our team since 2010, at present he is Partner and leads the teams of the Government Contracting, Infrastructure, and Real Estate Law practices. His practice has specialized in advising on public and commercial matters, specifically for the structuring and execution of legal strategies that enable the participation in selection processes, execution of government contracts, support infrastructure projects, and take care of the interests and reputation of our clients in real estate matters.

Carlos has a Master in Economic Sciences from Universidad Nacional de Colombia (2009), is an attorney from Pontificia Universidad Javeriana (2009), and an economist from Universidad Nacional de Colombia (2006).



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Santiago has been part of our team since 2019. He is a lawyer from the Universidad del Rosario (2019) and has deepened his studies in public law with a master's degree in public management from Universidad de los Andes (2023).

He has experience designing and in the execution of legal strategies, building and defending bids before governmental entities, and for governmental contract's execution. His vast experience in real estate and financial matters allows Santiago to provide an integrated approach to the main legal issues involved in infrastructure, farming, telecom, and energies, among other sectors.



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We are a regional firm expert in how to do business in Central America. We make a difference by being experts in our clients' business. This is possible thanks to a team of professionals with international training and technical sophistication, deep knowledge of the region and a solid reputation in industrial sectors.



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## COSTA RICA

# ALTA COSTA RICA

## 1. THE ROLE OF THE STATE IN THE MARKET

### A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?

According to statistics of acquisitions with public funds, published by the Comptroller General of the Republic, during the year 2022, 39,067 procedures were awarded, with a total value of 1.09 trillion colones, approximately US\$2,061 million, using an exchange rate of 530 colones. This amount means a percentage of 3% of the country's Gross Domestic Product for the year 2022, which was US\$68,489 million.

### B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/ OR SELECTION) THAT STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?



Marco Ureña



Luis Salazar



Rebeca Sandí

Due to its complexity and strategic interest, we can point out the following projects: a) "Ciudad Gobierno" (mixed-use project for the use of state offices, commerce and public space); b) "Hacienda Digital" (modernization of the Tax Administration platforms); c) expansion of the San José-Caldera highway; d) comprehensive solution project for the issuance of identity documents by the Tribunal Supremo de Elecciones; e) electric freight train, f) fast passenger train and g) water supply project for the middle section of the Tempisque River and coastal communities.

## 2. STATE CONTRACTORS

### A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR ARE THE CONTRACTORS LIMITED TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?

## COSTA RICA

In Costa Rica there is no limitation on the execution of contracts with foreign natural or legal persons, regardless of their nationality.

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements for foreigners who wish to participate in public procurement procedures in Costa Rica. However, foreigners interested in selling to the State must meet the necessary requirements to register in the Integrated Public Procurement System (“SICOP”).

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO PERFORM CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements for foreign persons to execute contracts in the country. The only limitation would be if the company is required, due to the nature of the contract, to provide services from Costa Rica and certain local presence of the contracting company is required.

### **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

The General Public Procurement Law of Costa Rica requires that all public procurement activity must be carried out

through SICOP. The use of any other means to promote contracting procedures entails absolute nullity. There are certain procedures that can occur out of SICOP, but they are a small minority.

## 3. INCENTIVES FOR CONTRACTING WITH THE STATE

### **A. INDICATE SOME OF THE MAIN RIGHTS FOR ENTITIES THAT WANT TO CONTRACT WITH THE STATE.**

The general principles of public procurement apply transversally to all contractual activity involving the use of public funds in Costa Rica and throughout the entire public procurement cycle and are understood as guarantees and rights of the parties. Several of these principles constitute rights of bidders and contractors, as well. The most important principles and rights are: equality, free competition, publicity, patrimonial intangibility and financial balance of the contract, integrity, good faith, value for money (all contracts must maximize the value of the public resources invested), transparency, social and environmental sustainability, effectiveness and efficiency, technological validity, contract mutability, control of all procedures and formalism of bidding procedures.

## 4. STATE INFORMATION

### **A. DOES THE STATE CARRY OUT PERIODIC PLANNING TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL OBLIGATION OR IS IT A COMMON PRACTICE?**

Public Administrations must develop planning actions, so that in the first month of each budget period, they must disclose the projected acquisition program in the SICOP. Said programming can be annual or multi-year.

### **B. ARE THE STATE'S NEEDS AND CALLS FOR ACQUISITIONS GENERALLY PUBLICLY ACCESSIBLE?**

Yes, as general rule, all bids that involve the use of public funds must be made in the SICOP, which is online and publicly accessible. However, the types of contracts depend on the institution, the nature and amount of the contract.

### **C. PLEASE DESCRIBE WHAT TYPE OF ENTITIES CAN ACCESS INFORMATION RELATED TO STATE ACQUISITIONS, THROUGH WHAT MEANS, AND IF THERE ARE ANY ASSOCIATED COSTS WITH THIS PROCESS.**

The use of SICOP is open and free, so anyone can access the platform through the following link: <https://www.sicop.go.cr/>

## 5. SELECTION MECHANISMS

### **A. WHAT CRITERIA DOES THE STATE USE TO SELECT ITS CONTRACTORS?**

In general, public institutions use evaluation parameters related to price, quality, experience and value for money (maximizing the value of resources under a results-based management approach). However, the application of said parameters may vary depending on each particular case, according to what is established in the respective specifications. Price is usually the criterion with the highest number of points in the evaluation.

### **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE CONTRACTING STATE ENTITY?**

The selection criteria may vary depending on the purpose of each contract. However, once the contract specifications are consolidated (there are no additional appeals against its content), it is not possible to change the previously announced selection conditions.

### **C. ARE THERE BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN FOREIGN ENTITIES ACCESS THESE BENEFITS?**

As general rule, there are no special benefits or incentives to prefer national offers over foreign ones. However, in terms of incentives there are two figures: a) strategic public



## COSTA RICA

purchasing (considers social, economic, environmental, cultural and innovation criteria in the specifications) and b) promotion of the participation of small and medium-sized companies (SMEs) by granting them, in case of a tie, additional points in the evaluation.

### **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS REQUIRING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

The use of SICOP is done virtually, therefore, no channel or office is enabled for the presentation of physical documents.

## 6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES

### **A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Yes. The General Public Procurement Law allows interested parties to submit proposal in consortium (joint venture) and joint bids. They are two different modalities. In the consortium (joint venture) offer, the parties are jointly and severally liable to the Administration, while in the joint offer, the parties join together to quote, each responding for their obligations.

### **B. CAN MULTIPLE INTERESTED PARTIES JOINTLY PERFORM A CONTRACT IN FAVOR OF A STATE ENTITY?**

Yes. Once the offer has been submitted as a consortium or jointly, if they are awarded, they are able to jointly execute the contract. During execution, the parties will be jointly liable if they are under the figure of the consortium or, each party will be liable for their obligations if they were presented under the figure of the joint offer.

### **C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?**

In the case of a consortium offer, there must be a prior consortium (joint venture) agreement in which the obligations assumed by each party are indicated. Likewise, the specifications may require other capacity requirements, as well as technical and financial solvency and determine which of these requirements must be met by both partners and which it is necessary for only one of the partners to comply.

## AUTHORS



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Marco holds a degree in law from the University of Costa Rica, a specialist in telecommunications regulation at the Universidad para la Cooperación Internacional and Master in business, regulatory and competition law at the Freie Universität Berlin, Germany. Marco advises local and transnational clients on issues related to administrative contracting, regulatory law, competition law and telecommunications. Marco is also the coordinator of the TMT (telecommunications, media and technology) of Alta Batalla. Marco has also been highlighted by Chambers & Partners Magazine in the areas of public law, competition law and TMT. Marco joined Alta Batalla in 2010 and is a partner since 2019.



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Luis holds a degree in law from the University of Costa Rica. Luis has experience advising institutions and public authorities concerning Public Law guidelines, and has participated in cases before the Constitutional Court and the Administrative Courts. He has intervened in dispute resolutions and negotiations between public and private actors, participated in administrative procedures and the elaboration and review of regulations, executive decrees, and legislative projects.



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Rebeca holds a degree in law from the University of Costa Rica. Rebeca has experience in public law, regulatory law, administrative law, constitutional law, public employment and dispute resolutions. She has provided legal advice to different institutions and public authorities, as well as in the drafting of legislative bills, executive decrees, regulations, guidelines, administrative procedures and legal management of processes before the Constitutional Chamber and the Administrative Courts. She has worked in multidisciplinary teams for the resolution of highly complex issues and negotiations between public and private actors. Prior to her incorporation to the firm, she worked as Advisor in the Presidency of the Republic of Costa Rica. Rebeca joined Alta Batalla as an Associate in 2022.



■ ECUADOR



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We are a specialized team consisting of lawyers and consultants. We constantly seek to innovate and be on the forefront of new legal and consulting trends. We are renowned for our proactive attitude, for constantly offering added value, and for satisfying the needs of our clients by providing them with practical solutions centered around their local and international operational requirements.

We strive to be strategic, long-term advisors and “partners” in a safe and trusting environment, intimately understanding the particularities of the industries and businesses of our clients. We also collaborate with, and contribute to, the community by supporting different pro bono initiatives.

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## ECUADOR

# ROBALINO

### 1. THE ROLE OF THE STATE IN THE MARKET

#### A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET IN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF GROSS DOMESTIC PRODUCT DOES STATE PROCUREMENT AMOUNT TO?

The Ecuadorian State is one of the main operators of the national economy, since it requires acquiring all types of goods and services to meet its needs, from the various spheres of public administration. The incidence and importance of public procurement processes in Ecuador is reflected in the dynamization of the market, generating income for companies of all sizes and business lines.

According to the information provided by the National Public Procurement Service in its accountability rendered in 2023, during fiscal year 2022, procurement by Ecuadorian State entities was recorded for more than USD 6,185 million. This figure corresponds to the execution of 183,557 public procurement processes executed at national level, by entities of the central public administration, as well as by the Decentralized Autonomous Governments.



Galo Guarderas



Skary Francisco Yépez

#### B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN A STATE OF STRUCTURING, PLANNING AND/OR SELECTION PROCESS) THAT WOULD STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?

The Ecuadorian government is currently executing ambitious projects such as the implementation of the first line of the Quito Metro, the promotion of energy projects, the structuring of projects to expand water treatment plants in the city, the creation of the Quito Solid Waste Management Environmental Complex and the provision of free public Internet access networks for populated and educational centers located throughout the country.

### 2. STATE CONTRACTORS

#### A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR DOES IT LIMIT ITS CONTRACTORS TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?

The Ecuadorian State, through its central and decentralized entities, accepts proposals and enters into contracts with national and foreign individuals and legal entities. However, by constitutional and loyal mandate, it is guaranteed, as a principle of Ecuadorian public procurement, that bids with Ecuadorian added value VAE (raw material, labor and national production) prevail, stimulating and supporting the development of local industry.

This does not prevent that due to the nature of the contracting there are processes with zero VAE where the best economic proposal that benefits the interests of the State is sought.

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO OFFER GOODS OR SERVICES TO THE STATE? WHICH ONES?**

There are no additional requirements for foreigners wishing to participate in contracting processes with the Ecuadorian State. Bidders must comply with the terms and conditions of the bidding terms and conditions that regulate the selection processes.

However, it is very important to consider that it will be necessary to officially translate the bidders' documents into Spanish, to have the figures converted into U.S. dollars and to apostille the documents that have been issued by governmental entities of other States.

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGN PERSONS TO EXECUTE CONTRACTS FOR THE SUPPLY OF GOODS OR SERVICES TO THE STATE? WHICH ONES?**

Although it is not necessary to incorporate any type of corporate vehicle to participate in public procurement processes, once the contract is awarded, contractors of the Ecuadorian State, in most cases, must proceed to domicile in Ecuador through the corporate vehicle of their choice and maintain a local representative with broad powers, in order to be able to carry out permanent activities in the country. Thus, foreign legal entities will have to incorporate a corporate vehicle in the country or register a branch authorized to represent the foreign legal entity.

### **D. ARE GOVERNMENT CONTRACTORS IN YOUR JURISDICTION REQUIRED TO REGISTER IN A PUBLIC REGISTRY AS GOVERNMENT SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

As a general rule, bidders and contractors of the Ecuadorian State must complete their registration in the Sole Registry of Suppliers (RUP) in order to participate in public procurement processes. The RUP is a virtual registry administered by the technical and control body for public procurement in Ecuador, this is, the National Public Procurement Service. This requirement applies even to foreign bidders that do not have a domicile or branch office registered in the country, who have a special type of registration. On the other hand,

## ECUADOR

suppliers contracting with the State through the contracting mechanism known as foreign contracting, a process that has unique singularities and specificities due to its nature, do not need to be registered.

### 3. INCENTIVES FOR CONTRACTING WITH THE STATE

#### A. WHAT ARE SOME OF THE MAIN RIGHTS OF THOSE WHO INTEND TO CONTRACT WITH THE STATE?

The public procurement system in Ecuador includes in its provisions the legal obligation to have a certification and budgetary support prior to initiating any public procurement procedure. This obligation generates a right for contractors, since once the contract is signed, the economic obligation of payment is considered a committed debt and said budget (money) is extracted from the total budget of the contracting entity, thus guaranteeing the payment of the goods or services acquired.

In addition, government entities have advertising and planning duties that allow their contractors and bidders to access information of interest to them in order to structure their proposals and/or conduct market studies, most of them without requiring payment for access to the bidding documents.

As explained, another right that local contractors have is to be at an advantage over foreign contractors due to the Ecuadorian value added required and considered at the time of qualifying the bids submitted.

Finally, government suppliers may be contractors in several

simultaneous processes, even with private companies, as long as they are not sanctioned or suspended in the RUP or prohibited in the bidding documents, allowing them to diversify and increase their income.

### 4. STATE INFORMATION

#### A. DOES THE STATE CARRY OUT PERIODIC PLANNING OF THE GOODS AND SERVICES REQUIRED TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL DUTY, OR DOES IT CORRESPOND TO A USUAL PRACTICE?

Yes. All public entities are obliged to carry out the annual planning of the procurements to be made in the following fiscal year and these become part of what will be the general budget of the public entity for that year.

Notwithstanding the foregoing, for justified reasons, amendments to the annual hiring plans may be made, with the due budgetary modification and approval of the planning areas.

#### B. ARE THE STATE'S NEEDS AND ITS CALLS FOR PROCUREMENT GENERALLY AVAILABLE TO THE PUBLIC?

Yes. In application of the principle of transparency, contracting entities publish information on their processes and contracts under execution in the Official State Contracting System (SOCE). In the aforementioned portal you can consult the



processes that are of interest to each of the participants in each of the sectors of the economy.

The information published in the SOCE ranges from the preliminary studies for the contracting process, the pre-contractual phase including the observations and evaluations of the contracting public entity and even the awarded bid and the signed contract.

**C. PLEASE DESCRIBE WHAT TYPE OF PERSONS CAN ACCESS INFORMATION RELATED TO GOVERNMENT PROCUREMENT, BY WHAT MEANS AND WHETHER THERE ARE ANY COSTS ASSOCIATED WITH THIS PROCESS.**

The SOCE is a publicly accessible virtual platform whose information can be consulted by any interested party through the following link: <https://www.compraspublicas.gob.ec/ProcesoContratacion/compras/PC/buscarProceso.cpe?sg=1>

In addition, SERCOP publishes information on the approved procurement plans of public entities through the following link: <https://portal.compraspublicas.gob.ec/sercop/plan-anual-de-contratacion-3/>

## 5. SELECTION MECHANISMS

**A. WHAT CRITERIA DOES THE STATE USE FOR THE SELECTION OF ITS CONTRACTORS?**

As a general rule, contracting entities define their contractors based on price and quality criteria; each entity defines in its bidding documents the objective criteria on the basis of which to evaluate the price and quality of the bids submitted. In addition to this, there is the percentage of the necessary VAE and requirements of existence and equity of the bidder.

**B. CAN THE SELECTION CRITERIA, OR THE WAY THEY ARE APPLIED, VARY ACCORDING TO THE WILL OF EACH CONTRACTING STATE ENTITY?**

Yes, everything will depend on the type of process to be executed and the nature of the same. Exceptionally, there may be cases of other criteria, but this arises from the dynamic nature of certain types of public procurement processes of electronic catalog, special regime or specific line of business.

The manner of application of these criteria will be defined autonomously by the contracting entity, notwithstanding which the National Public Procurement Service has defined a secondary regulation for this purpose.

In the specific case of the health sector there are specific mechanisms given the nature and importance of the processes.

**C. ARE THERE ANY BENEFITS OR INCENTIVES TO PREFER DOMESTIC BIDS OVER FOREIGN PROPOSALS? IF SO, CAN A FOREIGNER ACCESS THESE BENEFITS?**

## ECUADOR

Yes. Proposals for goods and services of national origin may be subject to bid qualification criteria. This is called the Ecuadorian Value Added Index. This condition may be accredited by a national or foreign bidder, and consists of complying with minimum percentages of national production and raw material by virtue of its origin. This origin corresponds to the manufacture of all or part of the goods in the country and/or the incorporation of goods and services manufactured in Ecuador.

### **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS THAT IMPLY HAVING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

The form of submission of bids will be defined in the bidding documents of the process, which may be virtual, physical or through SOCE. In recent years, as a result of the COVID pandemic, the trend has changed and the majority of public procurement procedures are now virtual; however, there are processes that, due to their nature, the delivery of information continues to be physical.

## **6. ALTERNATIVES FOR PARTICIPATION IN SELECTION PROCESSES**

### **A. CAN SEVERAL INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Yes, Ecuadorian regulations provide for the possibility of submitting bids individually or in a consortium promise. Under these alternatives, it is not necessary for the interested parties to constitute a consortium or a corporate vehicle at the time of submitting the bid.

In the event of being awarded the contract, they shall formalize the consortium or corporate vehicle and their liability before the contract shall be joint and several, without prejudice to the private internal arrangements among them.

### **B. CAN SEVERAL INTERESTED PARTIES JOINTLY EXECUTE A CONTRACT IN FAVOR OF A STATE ENTITY?**

Only if they have participated and have been awarded as a consortium, otherwise the execution is by individual supplier.

### **C. WHAT REQUIREMENTS MUST BE MET BY THOSE INTERESTED IN SUBMITTING A PROPOSAL OR EXECUTING A CONTRACT, JOINTLY, IN FAVOR OF STATE ENTITIES?**

Interested parties must submit with their bid a consortium promise form, which does not imply the constitution of any consortium or type of corporate vehicle. This form is part of the bidding documents published by the contracting entities.

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He worked as an attorney for the Judicature Council, where he provided legal defense for this public entity for court and out-of-court matters in the areas of administrative law, government procurement and constitutional law, as well as in dealing with and resolving administrative claims. Additionally, he was Legal Advisor to the Vice Ministry of Educational Management at the Ministry of Education, as well as attorney for the National Directorate of Government Procurement. He also worked as Legal Coordinator for a nationally and internationally recognized financial institution.



■ EL SALVADOR



ALTA



We are a regional firm expert in how to do business in Central America. We make a difference by being experts in our clients' business. This is possible thanks to a team of professionals with international training and technical sophistication, deep knowledge of the region and a solid reputation in industrial sectors.

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## EL SALVADOR

# ALTA VALDÉS, SUÁREZ Y VELASCO.

### 1. THE ROLE OF THE STATE IN THE MARKET

#### A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT (GDP) DO STATE ACQUISITIONS REPRESENT?

The Salvadoran State plays two roles in the market. Firstly, it acts as a purchaser of goods and services according to its needs, requiring a budget allocation of funds to proceed with acquisitions. The other role is fulfilled through the National Directorate of Public Procurement (DINAC by its initials in Spanish), ensuring institutional integrity, transparency, and the enhancement of an agile, efficient, and transparent public procurement system that leads to the best use of State resources.



Fernando Velasco



Rafael Maldonado



Iris Reyes

According to the fiscal transparency portal of the Ministry of Finance, as of December 2022, public investment amounted to US\$916.5 million, equivalent to 2.9% of GDP. Additionally, as of September 2022, the State carried out public procurement as follows: autonomous institutions accounted for US\$294.2 million, central government for US\$264.8 million, among other government entities.

#### B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/OR SELECTION) THAT STAND OUT DUE TO THEIR COMPLEXITY OR STRATEGIC IMPORTANCE?

Currently, the Salvadoran State is promoting interesting public investment projects through various contracting methods, such as: the Pacific train; Pacific airport; expansion of the coastal road known as the Surf City Tourist Coastal Route; construction of the Metropolitan North Corridor; construction of urban corridors 1, 2, 3 in the metropolitan area of San Salvador; expansion of the port of Acajutla;

expansion and construction of the Los Chorros highway and viaduct; construction of a new Government Center; construction and renovation of public schools; construction and design of public markets for the cities of Santa Ana and San Miguel, among others.

## 2. STATE CONTRACTORS

### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR DOES IT LIMIT ITS CONTRACTORS TO DOMESTIC INDIVIDUALS AND LEGAL ENTITIES?**

Salvadoran legislation allows both natural and legal persons, whether national or foreign, to submit proposals and contract with any state institution, as long as they have the legal capacity to enter into obligations. In the case of foreign legal entities, they must be legally incorporated in their country of origin. However, non-domiciled entities must consider different tax rates.

### **B. ARE THERE ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements for foreigners to bid with the State, as one of the principles of public procurement is equal treatment with nationals in the procurement process. It should only be noted that all documentation required by the terms of reference or bidding documents must be

duly apostilled, and if in a language other than Spanish, the corresponding translation documents must be attached. Likewise, when the accounting or financial information presented differs from the legal currency of El Salvador, documents demonstrating the exchange rate equivalence will be required.

### **C. ARE THERE ADDITIONAL REQUIREMENTS FOR FOREIGN INDIVIDUALS TO EXECUTE CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements in the law. However, individuals should always consider the provisions of the bidding documents or terms of reference, taking into account compliance with formal duties in tax and labor regulations that may require foreign individuals to have a place for notifications, local representatives, or establish domiciliation in El Salvador through a branch, a new corporate entity, or execute the contract through a temporary consortium.

### **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE PROVIDERS? IF SO, ARE THERE EXCEPTIONS TO THIS REQUIREMENT?**

Yes, there is an obligation to register in the Unique State Suppliers Registry (RUPES by its initials in Spanish) for all natural or legal persons wishing to participate in procurement processes.

There is an exception for procurement processes related to



## EL SALVADOR

emergencies, urgencies, or low value, which do not require registration prior to bidding but must do so if awarded within thirty days after notification.

Registered entities in RUPES are obligated to keep their information up to date.

### 3. INCENTIVES FOR CONTRACTING WITH THE STATE

#### A. CAN YOU MENTION SOME OF THE MAIN RIGHTS THAT THOSE WISHING TO CONTRACT WITH THE STATE HAVE?

Salvadoran legislation aims to ensure the procurement process by applying administrative rights and principles, such as the principles of equality, transparency, and free competition. By adhering to these principles, it seeks to provide equal treatment for all bidders and ensures that public procurement is accessible freely and equally to all interested parties.

Furthermore, it is governed by the Principle of Economic Equilibrium, which means that the Public Administration will safeguard the property right of any of the parties involved. Therefore, adjustments in the economic terms of contracts may be made by the Administration when the cause is not attributable to the contractor, or in cases of force majeure or unforeseeable circumstances.

### 4. STATE INFORMATION

#### A. DOES THE STATE CARRY OUT PERIODIC PLANNING OF THE GOODS AND SERVICES IT REQUIRES TO MEET ITS NEEDS? IF SO, IS THIS DUE TO A LEGAL OBLIGATION OR A COMMON PRACTICE?

Yes, the Salvadoran State indeed conducts annual procurement planning as well as budget availability for payments to obtain works, goods, and services for each institution.

This annual plan is regulated by the Public Procurement Law and is defined as a key planning document whose main objective is to serve as a management tool for the organization and control of contracts by each state institution.

It is established that each state institution must prepare and publish its annual planning on the Electronic Public Procurement System of El Salvador (COMPRASAL) within 30 calendar days after the start of the fiscal year, subject to authorization from the competent authorities. The plan should include the estimated value for each contract and all relevant information.

#### B. ARE THE STATE'S NEEDS AND ITS PROCUREMENT ANNOUNCEMENTS GENERALLY PUBLICLY ACCESSIBLE?

Yes, according to the Public Procurement Law, procurement announcements are made through COMPRASAL, a centralized computer system accessible via the internet.

The announcement will include the name of the process, the estimated contract amount when applicable, the deadline for

the preparation and submission of bids, and other relevant aspects specific to each process so that interested parties can access information about it.

Furthermore, the requiring institution may publish procurement processes through other digital or physical means for public access.

### **C. PLEASE DESCRIBE WHAT KIND OF INDIVIDUALS CAN ACCESS INFORMATION RELATED TO STATE PROCUREMENTS, THROUGH WHAT MEANS, AND IF THERE ARE ANY ASSOCIATED COSTS TO THIS PROCESS.**

Information related to State procurements is available to all national or foreign suppliers who are previously registered in the Electronic Public Procurement System of El Salvador (COMPRASAL by its initials in Spanish), and there is no cost associated with this registration.

Additionally, every supplier who wishes to participate in procurement processes, except for emergency or low-value purchases as detailed in the Public Procurement Law, must also register in the Unique State Suppliers Registry (RUPES). This registration is the means to validate and verify the legal capacity of suppliers to bid and contract with the State.

## **5. SELECTION MECHANISMS**

### **A. WHAT CRITERIA DOES THE STATE USE FOR SELECTING ITS CONTRACTORS?**

The selection of contractors may vary depending on the nature of the works, goods, and services to be acquired. Among the procurement methods are: a) competitive bidding; b) price comparison; c) direct contracting; and d) low value.

When it comes to the procurement of consultancy services, selection criteria may include: i) quality and cost, ii) fixed price, and iii) consultant qualifications, among other methods.

### **B. CAN THE SELECTION CRITERIA OR THEIR APPLICATION VARY ACCORDING TO THE WILL OF EACH CONTRACTING STATE ENTITY?**

Each institution is responsible for incorporating and publishing information and request for proposal documents, which will detail the evaluation criteria.

Likewise, the contracting institution will establish the Bid Evaluation Panel for each process, which may vary depending on the nature of the works, goods, and services to be acquired.

### **C. ARE THERE BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER FOREIGN PROPOSALS? IF SO, CAN A FOREIGN ENTITY ACCESS THESE BENEFITS?**

At the request of the contracting institution and subject to conditions specified in the request documents, priority may be given in the evaluation of offers to goods manufactured and/or produced in El Salvador, especially when they come from micro, small, and medium-sized enterprises. Even when there are evaluated offers with equal prices and qualifications

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based on the evaluation criteria, preference will be given to the offer made by a micro or small business, constituting a tie-breaker rule.

If both bidders are micro and/or small businesses, the decision will be based on who submitted the offer first.

### **D. IS IT POSSIBLE TO SUBMIT A PROPOSAL TO THE STATE ELECTRONICALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS THAT REQUIRE HAVING A TEAM IN YOUR JURISDICTION FOR THIS PURPOSE?**

The current Salvadoran regulations have promoted the use of information and communication technologies. Therefore, all the methods and special procurement procedures established in the Public Procurement Law allow the application of technology from the beginning, starting with the submission of the procurement requirement, presentation of bids, evaluation, and other phases of the public procurement cycle, as long as the process warrants it. However, if the type of procedure requires it, the processing and execution of procedures will be maintained using technological tools, electronics, and the respective physical documentation.

## 6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES

### **A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Yes, Salvadoran legislation allows bidders to associate with each other under the figure of joint participation or a joint bidder agreement, as long as it is established as such in the request document. In such cases, the evaluation of the offer will be conducted considering these circumstances. The members of the association are jointly liable to the contracting institution.

### **B. CAN MULTIPLE INTERESTED PARTIES JOINTLY EXECUTE A CONTRACT IN FAVOR OF A STATE ENTITY?**

Yes, they can do so under the figure of joint participation or a joint bidder agreement, as long as it is established as such in the request document, and they were awarded the works, goods, or services under that arrangement.

### **C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?**

Bidders must meet the following requirements:

- 1-Establish joint participation in the request document.
- 2-Create a joint participation agreement through a notarized public deed, which should include the following:

✓ **ORIGIN OF THE AGREEMENT:** Details of the project for which the joint venture of bidders has been formed, the name of the contracting institution, whether it was through competitive bidding or direct contracting, the type of service to be provided or the goods to be transferred, the project duration, and the payment amount.

✓ **AGREEMENT AND NAME:** The name of the joint venture of bidders.

✓ **DURATION:** According to the Tax Code, it is for the duration of the project for which it was formed.

✓ **PARTICIPATION PERCENTAGE:** The percentage of each member of the joint venture of bidders.

✓ **SELECTION OF REPRESENTATIVE:** One or more common representatives must be appointed, but for tax purposes, at least one must have a domicile in the Republic of El Salvador.

✓ **JOINT RESPONSIBILITY:** Members of the association are jointly responsible to the contracting institution.

✓ **DOCUMENTATION SAFEGUARD OBLIGATION:** Designate a responsible party for the documentation of the joint venture of bidders for a period of 10 years.

1- Appoint a common representative for the joint venture of bidders.

2- Register the joint venture of bidders or joint participation with the Ministry of Finance. In this regard, this temporary joint becomes a subject obligated to Salvadoran tax, labor, municipal, or any other relevant legislation.

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■ GUATEMALA



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# ALTA GUATEMALA

## 1. THE ROLE OF THE STATE IN THE MARKET

### A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?

The role that the Guatemalan State performs in relation to public procurement matters is, among others, enforce and comply with all required procedures as per the Public Procurement Law (Ley de Contrataciones del Estado (Decree 57-95)) for the purchase, sale and supply of assets, works and services that are needed by State entities or authorities, its decentralized and autonomous entities, performing units, municipalities and state or municipal public companies, all of which shall be subject to such law and its norms.

According to information from the State Contracting and Procurement Information System (known as Guatecompras), in the year 2022 there were tenders awarded by the public sector as follows:



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1. Central Administration 45,048 tenders equivalent to the amount of Q. 24,747,611,233.10 (approx. US\$ 3,172,770,670.89 – exchange rate Q.7.86 x US\$1.00).
2. Public Companies (National and Municipal) 1,594 tenders equivalent to the amount of Q. 1,741,145,669.90 approx. US\$ 221,519,805.33 – exchange rate Q.7.86 x US\$1.00).
3. Decentralized, Autonomous and Social Security Entities 90,359 tenders equivalent to the amount of Q. 6,273,127,468.95 (approx. US\$ 798,107,820.47 – exchange rate Q.7.86 x US\$1.00).
4. Local Governments (Municipalities, Commonwealths, etc.) 13,620 tenders equivalent to the amount of Q. 7,993,024,100.20 (approx. US\$ 1,016,924,185.77 – exchange rate Q.7.86 x US\$1.00).

Please note that there is no fix exchange rate, hence it varies freely as per market conditions on a daily basis and is published by the Guatemalan Central Bank as a reference tool. However, the US\$ - Quetzales exchange rate has been very stable in the last few years.

## GUATEMALA

In total, the contracting amounts indicated amount to Q. 40,754,908,472.15 (approx. US\$ 320,333,580,591.09 - exchange rate Q.7.86 x US\$1.00) which corresponds to a percentage of approximately 4.1% of the country's Gross Domestic Product for the year 2022, in the economic activity of Public Administration and defense.

### **B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/ OR SELECTION) THAT STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?**

The Government of Guatemala is currently developing different projects to mitigate the flow of vehicles within the city of Guatemala, such as the projects called Construction of the Belize II Bridge, and the improvement of the CA-13 Puerta del Cielo highway, Melchor de Mencos, Petén. Likewise, projects in health are contemplated, such as the construction of new hospitals under the current President's administration.

In addition, although they have not aroused much interest due to the lack of promotion by the State and the complexity of the applicable law, there is a portfolio of infrastructure projects under the public-private partnership scheme, including, among others, the modernization of La Aurora International Airport, which is the main airport in Guatemala, toll roads, mass public passenger transportation systems (metro and/or commuter train), railroad projects, modernization of seaports, etc. For more information on

these PPP projects, please visit this link: <https://anadie.gob.gt/proyectos/>

## 2. STATE CONTRACTORS

### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR ARE THE CONTRACTORS LIMITED TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?**

If proposals from foreign entities are accepted, in accordance with Article 25 of the Public Procurement Law (Ley de Contrataciones del Estado (Decree 57-95)), among others. The General State Procurement Registry -RGAE as per its acronym in Spanish- is the entity in charge of registering suppliers as potential bidders so that they may participate in any State procurement. The RGAE allows the following persons to register as suppliers:ç Individual Person: Temporary Staff (Technical or Professional), Individual Consultant (National or Foreign) and Individual Trader.

Legal Person: Corporations, Associations, Foundations or NGOs and Foreign Corporations..

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

In Guatemala, for a foreign company to be registered as a supplier, there are requirements that vary from those of a local company, for example:

1. The foreign entity must make a provisional registration before RGAE and then it must make the definitive registration.
2. In the registration and pre-qualification of a foreign company, different requirements are requested, and most of the documents must be accredited by means of legalized copies.

Additionally, it is important to mention that a foreign company may register as a supplier of goods, supplies and services and as a supplier of works and services related to Public Works, but not as a consulting firm. However, a foreigner may register as an individual consultant.

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO PERFORM CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

The technical or commercial requirements and formalities for the execution of contracts are at the discretion of the state entity requesting the goods or services to be fulfilled, both for a national or foreign person. Notwithstanding the foregoing, such requirements and formalities may not go beyond what is allowed, indicated and regulated in the Public Procurement Law and its regulations. Normally, at the time of publishing a bid requesting a good or service, the terms of reference include the model or draft of the contract to be eventually executed with the awardee.

For a foreign legal entity, it must be considered that they must have a legal representative in Guatemala who has all the necessary powers and aptitudes to be able to sign on behalf of the entity.

If a foreign entity will have operations in Guatemala, it is usual and advisable to incorporate a company as a local subsidiary or register a branch in the Mercantile Registry, which will allow it to contract through such subsidiary or the branch as an entity registered and incorporated in Guatemala for practical purposes.

### **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

Any individual or legal entity is required to be registered as a contractor / supplier in the RGAE, must meet requirements and follow a registration process according to the type of person.

## **3. INCENTIVES FOR CONTRACTING WITH THE STATE**

### **A. A. INDICATE SOME OF THE MAIN RIGHTS FOR ENTITIES THAT WANT TO CONTRACT WITH THE STATE.**

The main right of those who bid in a public bidding process for the State or any public entity or authority, and are awarded, is to receive the agreed payment for the good, service or

## GUATEMALA

consultancy provided if they have complied with the terms of reference and the requirements of the respective award and agreement.

Additionally, in accordance with Article 37 of the Public Procurement Law, the contracting public entities may dispense with the negotiation at any stage of the negotiation, if they do so prior to the execution of the respective contract, meaning that the bidder, individual or legal entity, may be compensated for the expenses incurred in the preparation of its bid in the following manner:

- If the decision to dispense is made after the submission of the bid and prior to award, the first 3 places must be compensated for the equivalent of two and one-half per thousand (2.5 /1.000) of the amount of the bid.
- If the decision to waive is made after the award and prior to the execution of the respective contract, the first place must be compensated by the equivalent of five per thousand (5/1.000) of the amount of the bid.

### 4. STATE INFORMATION

#### **A. DOES THE STATE CARRY OUT PERIODIC PLANNING TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL OBLIGATION OR IS IT A COMMON PRACTICE?**

Yes, the State of Guatemala contemplates an annual budget in which the revenues and expenditures for the fiscal year of the State are estimated; this circumstance is due to a

legal duty established in the Constitution of the Republic of Guatemala.

Additionally, in accordance with Article 21 of the Organic Budget Law, entities must submit their preliminary draft budgets and operating plans to the Ministry of Public Finance.

#### **B. ARE THE STATE'S NEEDS AND CALLS FOR ACQUISITIONS GENERALLY PUBLICLY ACCESSIBLE?**

Yes, in general, all calls for bids to purchase and contract goods and services governed by the Public Procurement Law are publicly accessible through the official platform "State Contracting and Procurement Information System - Guatecompras" administered by the Ministry of Public Finance, which seeks to make bids and acquisitions transparent and efficient.

This platform provides the following benefits:

- ✓ Transparency in procurement processes, since the consultation in electronic media is faster and is available to whoever always requires it.
- ✓ For suppliers, greater possibilities to participate in public procurement.
- ✓ Transparent mechanisms for accountability in government procurement, as all the information is available at any time and from any place.
- ✓ Provides citizens with information such as which agencies and entities are carrying out a procurement process; under what procedures procurement is carried out; which companies participate in tenders, and which are the winners;

and if any appeal or disagreement was filed in each process or if any supplier or contractor has been sanctioned.

Some specific entities whose organic laws establish or permit specific procurement procedures may have different solicitation mechanisms.

### **C. PLEASE DESCRIBE WHAT TYPE OF ENTITIES CAN ACCESS INFORMATION RELATED TO STATE ACQUISITIONS, THROUGH WHAT MEANS, AND IF THERE ARE ANY ASSOCIATED COSTS WITH THIS PROCESS.**

The Guatecompras platform is a free public access virtual platform whose information can be consulted by any interested party through the following link: <https://www.guatecompras.gt/>

## **5. SELECTION MECHANISMS**

### **A. WHAT CRITERIA DOES THE STATE USE TO SELECT ITS CONTRACTORS?**

Guatemala, through the Public Procurement Law, establishes the following qualification criteria: quality, price, time, characteristics, and other conditions that the state entity establishes in the bases of the event, in which the percentage for each criterion will also be determined.

### **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE CONTRACTING STATE ENTITY?**

The basic criteria (quality, price, time, characteristics) do not vary between each entity, but as indicated above, additional conditions may be added depending on the state entity, good or service. One of the most common additional conditions requested is the experience in the market in which it participates.

### **C. ARE THEIR BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN FOREIGN ENTITIES ACCESS THESE BENEFITS?**

There are no benefits or incentives between national or foreign bids, since the purpose of the State having created a Registry and an official platform is to ensure transparency and equality in the acquisitions to be made, all regulated under the corresponding legal regulations.

### **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS REQUIRING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

Since there is an official virtual platform, it would be understood that the entire process, from the bid to the award, should be only virtual, but in some procurement events it is

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necessary to submit the bid and documents in physical form. This is determined on a case-by-case basis in the respective terms of reference, depending on the contracting entity, although the most common nowadays is that the processes are virtual.

### 6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES

#### **A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Although this figure is not regulated in the corresponding norms, it is a practice that State entities do accept. In the case of several entities the bid is submitted as a unified group or consortium. This must be regulated in the respective bid's terms of reference.

#### **B. CAN MULTIPLE INTERESTED PARTIES JOINTLY PERFORM A CONTRACT IN FAVOR OF A STATE ENTITY?**

When the interested parties form a consortium, they may jointly enter a contract with the State to provide or sell goods or services, provided that the terms and conditions allow it. All of such entities will be jointly liable for the performance and compliance of the agreement, unless otherwise stated in the terms of reference or the particular agreement.

#### **C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?**

Each of the members of the consortium must comply with the requirements and obligations requested by the State entity and additionally present a consortium compromise or agreement if the entity so desires based on the specifications required of them.

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## HONDURAS

# ALTA HONDURAS

### 1. THE ROLE OF THE STATE IN THE MARKET

#### **A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET IN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF GROSS DOMESTIC PRODUCT DOES STATE PROCUREMENT AMOUNT TO?**

The State of Honduras may acquire, through different types of procurement processes, various supplies of goods or services, public works contracts and consulting services. Procurement will depend on the needs of each institution and the budget approved for such contracts.

According to data from the Government Procurement and Contracting Regulatory Office (ONCAE), the budget executed in public procurement and contracting for 2021 was L 19,467 million lempiras, which represents 2.89% of GDP in 2021, well below that of developed countries, which according to Transparency International ranges between 13% and 20% per year.



Alejandra Suárez



Michael Rascoff

#### **B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN A STATE OF STRUCTURING, PLANNING AND/OR SELECTION PROCESS) THAT WOULD STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?**

According to the Public Investment Program for the year 2023, it has been programmed to invest in the Commercial Metering System for the National Transmission Network, as well as in the expansion of the energy transmission infrastructure, through energy transmission projects, Regional Electricity Market, such as the Rehabilitation and Repowering of the Cañaveral Rio Lindo Hydroelectric Power Plant, and the Electric Energy Transmission project.

There are investment plans to improve the highway system in 10 of the country's departments, including the construction and rehabilitation of 1,3294 linear kilometers.

In the agricultural sector, investments are focused on the COMRURAL II and III projects, the Irrigated Agricultural

Development Project, and the Integral Rural Development and Productivity Project, which will implement 1,310 hectares of irrigation, 173 business plans, and 126 technical assistance projects.

In the public works sector, an investment of L.181.1 million is foreseen for the expansion and improvement of penitentiary centers.

## 2. STATE CONTRACTORS

### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR DOES IT LIMIT ITS CONTRACTORS TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?**

Due to the Principle of Equality and Free Competition, the participation of foreign bidders is allowed.

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO OFFER GOODS OR SERVICES TO THE STATE? WHICH ONES?**

There are no additional requirements for foreigners wishing to participate in contracting processes with the State in Honduras; however, in the selection of the best offer, in the case of supplies, an amount equivalent to the corresponding import taxes will be added to the best foreign offer, if the good or supply is subject to such tax, otherwise, an amount equivalent to fifteen percent (15%) of the value of such offer, in the case of public works and basic services, always for

purposes of evaluation and selection of the best offer, up to seven and a half percent (7 1/2%) of the amount of the offer shall be added to the offer of foreign companies. If the result of this operation is that the best foreign offer is higher in amount than the national offer, the latter will be chosen as the best offer of the bidding and the contract will then be awarded.

This mechanism shall not apply to foreign participants to be given national treatment under bilateral or multilateral trade agreements.

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGN PERSONS TO EXECUTE CONTRACTS FOR THE SUPPLY OF GOODS OR SERVICES TO THE STATE? WHICH ONES?**

Yes, foreign companies must comply with the requirements established in Honduran civil and mercantile legislation, i.e., be duly incorporated or constituted in the country, and may, in exceptionally qualified cases, bid directly or be represented by agents, representatives or distributors legally constituted in the country.

### **D. ARE GOVERNMENT CONTRACTORS IN YOUR JURISDICTION REQUIRED TO REGISTER IN A PUBLIC REGISTRY AS GOVERNMENT SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

## HONDURAS

Yes, contractors, national or foreign, must register in the Government Procurement and Contracting Regulatory Office (ONCAE). Registration is not mandatory for contracts that, due to their amount, do not require bidding or competition, for public works contracts under L. 1,000,000.00 (\$40,567.00), for consulting contracts under L. 300,000.00 (\$12,170.00), and for contracts for the supply of goods and services under L. 300,000.00 (\$12,170.00).

### 3. INCENTIVES FOR CONTRACTING WITH THE STATE

#### A. INDICATE SOME OF THE MAIN RIGHTS THAT THOSE WHO INTEND TO CONTRACT WITH THE STATE HAVE?

Contracts made with the State must have a previously designated budget, under penalty of nullity of the contract. In the event of nonperformance by the State, the contractor is entitled to payment of the services rendered and the damages caused. The contractor shall have the right to the recognition of greater and the right to the payment of interest for late payment. Contractors shall have the right to submit bids in consortium in contracting procedures.

### 4. STATE INFORMATION

#### A. DOES THE STATE CARRY OUT PERIODIC PLANNING OF THE GOODS AND SERVICES REQUIRED TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL

#### DUTY, OR DOES IT CORRESPOND TO A USUAL PRACTICE?

Yes, the State of Honduras annually approves a General Budget of Income and Expenditures, in which budgetary allocations are made, for which the Central and Decentralized Government, Decentralized institutions, Hospitals and Departmental Regions, and any Entity that contracts for the acquisition of goods, works, consultancies and services must prepare an Annual Procurement and Contracting Plan. This circumstance corresponds to a legal duty.

#### B. ARE THE STATE'S NEEDS AND ITS CALLS FOR PROCUREMENT GENERALLY AVAILABLE TO THE PUBLIC?

Yes, the bidding processes, tenders and their respective calls for bids are of public access, based on the provisions of the Law of Transparency and Access to Public Information.

#### C. PLEASE DESCRIBE WHAT TYPE OF PERSONS CAN ACCESS INFORMATION RELATED TO GOVERNMENT PROCUREMENT, BY WHAT MEANS AND WHETHER THERE ARE ANY COSTS ASSOCIATED WITH THIS PROCESS.

Anyone can access information related to state procurement, this can be done through the platform:

<http://www.oncae.gob.hn/>

There is also a single Transparency Portal that is part of the National Public Information System (SINAP):

<https://portalunico.iaip.gob.hn/homeLanding>

## 5. SELECTION MECHANISMS

### A. WHAT CRITERIA DOES THE STATE USE FOR THE SELECTION OF ITS CONTRACTORS?

The award is based on objective criteria of price and technical conditions, which may also include financing conditions, environmental benefits, availability of spare parts and services, technical assistance, lower operating costs, and delivery terms.

### B. CAN THE SELECTION CRITERIA, OR THE WAY THEY ARE APPLIED, VARY ACCORDING TO THE WILL OF EACH CONTRACTING STATE ENTITY?

Yes, the selection criteria may vary according to the type of contract and the specifications prepared by each institution.

### C. ARE THERE ANY BENEFITS OR INCENTIVES TO PREFER DOMESTIC BIDS OVER FOREIGN PROPOSALS? IF SO, CAN A FOREIGNER ACCESS THESE BENEFITS?

Yes, there is a margin of national preference, however foreign participants may have the same national treatment by virtue of the subscription of bilateral or multilateral trade agreements to which the State of Honduras is a party

and in the case of loans granted by international financial organizations.

### D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS THAT IMPLY HAVING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?

Yes, it is feasible to submit proposals virtually, as long as this virtual submission is established in the bidding documents. It is not necessary to have a team in the jurisdiction, however local legal advice is recommended.

## 6. ALTERNATIVAS PARA LA PARTICIPACIÓN DE PROCESOS DE SELECCIÓN

### A. CAN SEVERAL INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?

Yes, different interested parties may participate in a consortium in the contracting procedures, without this implying the creation of a different legal entity.

### B. CAN SEVERAL INTERESTED PARTIES JOINTLY EXECUTE A CONTRACT IN FAVOR OF A STATE ENTITY?

Yes.

## HONDURAS

### **C. WHAT REQUIREMENTS MUST BE MET BY THOSE INTERESTED IN SUBMITTING A PROPOSAL OR EXECUTING A CONTRACT, JOINTLY, IN FAVOR OF STATE ENTITIES?**

In order to use this mechanism, it will be necessary to prove to the contracting body the existence of a consortium agreement, which at least regulates the obligations between the signatory parties and the terms of their relationship with the bidding body, including the designation of a sole representative or manager with sufficient powers to exercise the rights and fulfill the obligations arising from the contract.

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■ MEXICO



Founded in 1972 by Luis J. Creel Luján y Luis J. Creel C., Creel Abogados has consolidated a strong practice specialized in Corporate and Finance Law representing corporations, financial institutions, and Mexican and foreign investment funds in a broad variety of matters and projects, including M&A, corporate governance and strategic alliances, as well as financings, capital markets and private equity. Its relevant transactional practice is complemented with expert teams in Real Estate, Tax, Labor, Natural Resources and Litigation, as well as Antitrust, ESG and Compliance. The firm provides personalized services to its clients through the partners' direct involvement, and our legal team has broad experience in national and international transactions in diverse business and industry sectors.

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MÉXICO

# CREEL ABOGADOS



Gustavo Struck



Alejandro Creel

## 1. THE ROLE OF THE STATE IN THE MARKET

### A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?

Although Mexico is generally considered to have a market economy, it actually has a mixed economy, in which the role of the State consists of owning and managing certain companies (State-owned companies and State-owned productive companies, mainly in the oil & gas and electricity sectors), regulating the economic activity, spending in accordance with the annual Federal Budget, stabilizing the economy through various instruments, and taxing citizens for carrying out certain activities.

In Mexico, public procurement by the State accounts for approximately 16% of total government spending, and represents roughly 3.6% of the country's gross domestic product.

### B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/OR SELECTION) THAT STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?

Currently, the Mexican State is in the process of executing several important large-scale infrastructure projects, among which the following are noted: (i) the Olmeca Refinery in Dos Bocas, which will be the largest crude oil processing plant in Mexico, (ii) the Mayan Train consisting of 1,525 km of railroad tracks, that will cross the States of Tabasco, Chiapas, Campeche, Yucatan and Quintana Roo mainly for people transportation, and (iii) the Interoceanic Train, consisting of a railroad project that will connect the ports of Salina Cruz, State of Oaxaca with Coatzacoalcos, State of Veracruz.

## 2. STATE CONTRACTORS

### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR ARE THE CONTRACTORS LIMITED TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?**

Under Mexican law, public bids may be (i) national, in which only Mexican nationals may participate (under certain circumstances established in the law), (ii) international under the coverage of treaties, in which only Mexican and foreign bidders from countries with which Mexico has entered into free trade agreements may participate, and (iii) open international, in which both Mexican and foreign bidders may participate.

The State may deny participation to foreigners when their country does not grant reciprocal treatment to Mexican bidders, contractors, goods or services.

The State enacts regulation to be observed by governmental agencies and entities, aimed to promote the participation of national companies, especially micro, small and medium-sized companies. Likewise, in certain acquisitions the State may require that a certain percentage of national content is met.

In open international contracting procedures, the State (agencies and entities) shall opt, under equal conditions, for the use of Mexican human resources and the acquisition and

leasing of goods produced in Mexico with a percentage of specific Mexican content.

It is important to mention that in accordance with the Foreign Investment Law (Ley de Inversión Extranjera), there are: (i) activities exclusively reserved to the State, (ii) activities exclusively reserved to Mexicans or Mexican companies with a foreigner exclusion clause, (iii) activities in which foreign investment may participate in limited percentages, and (iv) activities in which foreign investment may participate in a percentage greater than 49%, with a favorable resolution from the National Commission of Foreign Investments (Comisión Nacional de Inversiones Extranjeras).

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements for foreigners to submit bids for goods or services to the State. Foreigners, in the processes that allow their participation, must comply with the same terms and conditions as nationals, without the State being able to impose greater burdens in the bidding guidelines that it publishes. When foreigners provide documents in a language other than Spanish, they must be accompanied by a Spanish translation certified by an official translator. Likewise, official documents issued abroad must be duly apostilled, and legal representatives of foreigners shall have sufficient powers of attorney granted in accordance with Mexican law.

## MÉXICO

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO PERFORM CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements for foreigners to perform contracts for the provision of goods or services to the State; however, in case of foreign legal entities, they must perform either through a Mexican subsidiary or be registered as a branch in Mexico and at the Federal Taxpayers Registry of the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público), in order to carry out commercial activities in Mexico.

Notwithstanding, certain agencies, entities or State-owned productive companies may require through the corresponding bidding guidelines, that the awarded bidder forms a Mexican company before signing the respective contract.

### **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

At the Federal level there is the Sole Registry of Suppliers and Contractors (Registro Único de Proveedores y Contratistas; "RPUC"), which is available online for the general public; however, it is not mandatory to be registered therein to participate in a public procurement procedure.

It should be noted that certain agencies, entities or State-owned productive enterprises may require, through the corresponding bidding guidelines, that bidders carry out a pre-registration in their suppliers' registry and may also require the awarded bidder to register in the RPUC and/or in the suppliers' registry of the corresponding agency, entity or State-owned productive enterprise.

## **3. INCENTIVES FOR CONTRACTING WITH THE STATE**

### **A. INDICATE SOME OF THE MAIN RIGHTS FOR ENTITIES THAT WANT TO CONTRACT WITH THE STATE.**

In the contracting processes, State agencies and entities have the obligation to establish the same requirements and conditions for all participants and provide all interested parties with equal access to the information related to such processes, in order to avoid a preferential treatment to any participant.

For the participation or contracting in contracting processes, no requirements may be established that have the purpose of limiting the process of competition and free concurrence, nor include requirements or conditions that are impossible for the participants to comply with.

Consulting the publication of the calls for bids is free for all who intend to contract with the State and shall be made through Compranet, as detailed in section 4 of this Guide. Additionally, prior to the publication of the call, the agencies and entities may circulate a draft of the call through

Compranet, for at least 10 business days, and during such period the agencies and entities may receive comments from those who intend to contract; such comments to the draft call shall be analyzed by the agencies and entities in order to, if appropriate, consider them to improve the draft.

State agencies and entities shall make available to the general public, through Compranet and its website, no later than January 31st of each year, their annual program of acquisitions, leases and services for the corresponding fiscal year.

Finally, applicable Mexican law allows that two or more persons jointly submit a proposal, without the need to form a company, as detailed in section 6.

## 4. STATE INFORMATION

### **A. DOES THE STATE CARRY OUT PERIODIC PLANNING TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL OBLIGATION OR IS IT A COMMON PRACTICE?**

According to the Mexican Federal Constitution, the Federal Congress must annually approve the Federal Expense Budget (Presupuesto de Egresos de la Federación). This budget is the legislative action that authorizes public spending for the corresponding fiscal year. The budget planning process involves the identification of the government's needs, the estimation of available resources and the allocation of these funds to different programs and projects. In addition,

constant monitoring and evaluation is carried out to ensure that resources are used efficiently and effectively to meet the needs of the population.

In addition, at the local level, each State has its corresponding State Expense Budget, which authorizes public spending at the State level for the fiscal year in question. The approval process follows specific guidelines and regulations in accordance with State laws and Constitution.

### **B. ARE THE STATE'S NEEDS AND CALLS FOR ACQUISITIONS GENERALLY PUBLICLY ACCESSIBLE?**

In Mexico, government procurement calls are subject to specific regulations that emphasize transparency and publicity. Hence, calls and public acquisition processes are published on the government acquisitions portal known as "Compranet". Compranet is the official electronic platform used by the Federal government and several State and Municipal governments to carry out public contracting processes for goods, services and public works.

Through Compranet, calls for bids, bidding guidelines, as well as the requirements, terms and conditions to participate in government acquisitions processes are published. Interested suppliers and contractors can access this platform to obtain detailed information on business opportunities with the public sector.

## MÉXICO

### **C. PLEASE DESCRIBE WHAT TYPE OF ENTITIES CAN ACCESS INFORMATION RELATED TO STATE ACQUISITIONS, THROUGH WHAT MEANS, AND IF THERE ARE ANY ASSOCIATED COSTS WITH THIS PROCESS.**

Compranet is a free virtual platform for public access, available to any person who wishes to consult information related to Mexican government acquisitions. This platform can be accessed through the following link:  
<https://compranet.hacienda.gob.mx/web/login.html>.

## 5. SELECTION MECHANISMS

### **A. WHAT CRITERIA DOES THE STATE USE TO SELECT ITS CONTRACTORS?**

As a general rule, the main criteria used by the State for the selection of its contractors are (i) efficiency, (ii) effectiveness, (iii) economy, (iv) transparency, (v) honesty, and (vi) impartiality; which criteria shall ensure the best conditions for the State and satisfy the purposes for which they are destined.

The State agencies and entities shall select the process that, according to the nature of the acquisition, guarantees the State with the best available conditions in terms of price, quality, opportunity and other pertinent circumstances: (i) public bids, (ii) invitation to determined number of persons, which shall be at least three persons, or (iii) direct award.

It should be noted, however, that for the acquisition of goods

and the contracting of services, the procurement process that primarily promotes transparency and competition is public bidding.

The types of public bids, invitations to at least three persons and direct awards, are:

(x) national, in which only Mexican nationals may participate and the goods to be acquired are produced in Mexico and have at least 50% of national content, which shall be determined by (a) considering the human resources, components of the goods and other aspects determined by the Ministry of Economy (Secretaría de Economía) through general rules; or (b) being below the thresholds established in international treaties or once these thresholds are exceeded, the corresponding reserve has been formed.

(y) international under the coverage of international treaties, in which only Mexican and foreign bidders from countries with which Mexico has entered into a free trade agreement with a government procurement chapter, may participate when it is mandatory pursuant to the provisions of the free trade agreements and under which coverage the bidding has been carried out, in accordance with the rules of origin provided for in the treaties and the general rules issued by the Ministry of Economy; and

(z) open international bids, in which Mexican and foreign bidders may participate, regardless of the origin of the goods to be acquired or leased and of the services to be contracted, when: (a) a national bid has been held and declared void, or (b) it is so established for procurements financed with external

credits granted or guaranteed by the federal government.

On the other hand, in the exceptional circumstances provided for in the applicable law, such as in the event that the social order, economy, public services, health, safety or environment of any area or region of the country is endangered or altered as a result of an act of God or force majeure, or if there are circumstances that may cause significant losses or additional costs, then, in such cases the State agencies and entities, under their responsibility, may resolve not to carry out the public bid process and enter into contracts through the invitation to at least three persons or direct award processes, which must be based and justified, according to the circumstances of each case in the aforementioned criteria.

Additionally, the State agencies and entities, under their responsibility, may contract acquisitions, leases and services, without being subject to the public bid process and proceed through the invitation to at least three persons or direct award processes, when the amount of each transaction does not exceed the maximum amounts established for such purpose in the Mexican Federal Budget of each year. In both procedures, the results of the market investigation that was the basis for their selection must be included.

Lastly, there are modalities for evaluating the proposals of the participants, such as: (i) binary evaluation, only applicable when it is not possible to use the cost benefit or points and percentages modalities, and by which only the bidder that meets the requirements established by the bidding entity and offers the lowest price is awarded the

bid; (ii) cost benefit, that takes into account the costs and benefits associated directly and indirectly with the purchase, execution and operation of the goods or services involved; and (iii) points and percentages, in which weighted criteria is used to determine which offer presents the best combination of quality and price.

## **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE CONTRACTING STATE ENTITY?**

The selection criteria may vary in public bids carried out by Federal public law entities with autonomy derived from the Mexican Constitution, such as Mexico Central Bank (Banco de México), Federal Economic Competition Commission (Comisión Federal de Competencia Económica), National Commission for the Evaluation of Social Development Policies (Comisión Nacional de Evaluación de la Política de Desarrollo Social), Attorney General's Office of the Republic (Fiscalía General de la República), Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones), National Institute of Statistics and Geography (Instituto Nacional de Estadística y Geografía), National Institute of Transparency, Access to Information and Protection of Personal Data (Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales), and National Electoral Institute (Instituto Nacional Electoral), as well as entities that have a specific regime for public contracting, such as the National Autonomous University of Mexico (Universidad Nacional Autónoma de México) and El Colegio de México.

## MÉXICO

### **C. ARE THERE BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN A FOREIGN ENTITY ACCESS THESE BENEFITS?**

Applicable law provides that once the proposals are evaluated, if there are equal conditions in two offers that are solvent and comply with all the legal, technical and economic requirements established in the call, preference will be given to those who belong to the micro, small and medium-sized national companies sector over foreigners; provided, that foreigners may include in their proposals micro, small and medium-sized companies, without any limitation.

The Ministry of Economy issues regulations to State agencies and entities, derived from programs to promote the participation of national companies, particularly micro, small and medium-sized national companies. On their part, State agencies and entities design and implement programs for the development of providers of micro, small and medium-sized national companies to generate supply chains of goods and services that are regularly subject to public bids.

### **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS REQUIRING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

In case the corresponding call for a public bid provides it, it is feasible to submit a proposal to State agencies or

entities through the platform of Compranet; for which it is necessary to be duly registered in such platform, as well as to have an updated and valid Advanced Electronic Signature (Firma Electrónica Avanzada) issued by the Mexican Tax Administration Service (Servicio de Administración Tributaria or SAT) of the Ministry of Finance and Public Credit.

## **6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES**

### **A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

It is possible for several interested parties in a selection process to jointly submit a proposal. This practice known as “joint proposal” or “consortium” (consorcio), is permitted in certain types of public bids when contemplated in the terms of the corresponding call or bidding guidelines. The State will carry out the evaluation of the joint proposals taking into consideration the selection criteria established in the respective process.

Interested parties wishing to submit a joint proposal must generally enter into a consortium agreement that establishes the terms and conditions of their collaboration, including the joint operation, the distribution of responsibilities, organization, coordination, risks and benefits. Each member of the consortium must comply with the eligibility and technical capacity requirements established in the call. The execution of a consortium agreement is of utmost importance to ensure a successful collaboration and to define the role of



each member. The formation of a consortium does not imply the creation of a new legal entity.

## **B. CAN MULTIPLE INTERESTED PARTIES JOINTLY PERFORM A CONTRACT IN FAVOR OF A STATE ENTITY?**

As mentioned in paragraph 6.a above, Mexican law permits the execution of a contract in favor of a State entity under the modalities of “joint proposal” or “consortium”, with or without incorporating a legal entity to act as the contracting entity.

In the event the awarded contract is jointly executed, it must be signed by the legal representative of each of the persons participating in the joint proposal. For all purposes of the process and the contract, they shall be considered jointly and severally liable as established in the contract.

## **C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?**

Those interested in submitting a joint proposal or jointly executing a contract in favor of State entities, must rigorously comply with a series of requirements. Firstly, it is imperative to establish a detailed collaboration agreement that exhaustively specifies the roles, liabilities and distribution of benefits among the parties involved. Subsequently, they must carry out a registration process that adjusts to the requirements set out in the corresponding call, as well as to

provide evidence with respect their technical and financial suitability. Furthermore, it is essential to ensure that the legal representatives are duly authorized and strictly comply with the deadlines and procedures established in the respective call.

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## NICARAGUA



NAVARRO AMADOR

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## NICARAGUA

# NAVARRO AMADOR



Luis Ramirez

## 1. THE ROLE OF THE STATE IN THE MARKET

### **A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?**

According to Public procurement electronic system, during 2022 were registered acquisitions by nicaraguan State entities totaling more than C\$37,717.80 million Nicaraguan cordobas

Nicaragua´s State acquires all kind of goods and services. There is no restriction to entities to acquire certain goods and services. Depending on the specialty, functions, and objectives of each entity the acquisitions are determined by the necessities that require to be satisfied.

### **B. WHAT PROJECTS IS THE NICARAGUAN STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/OR SELECTION) THAT YOU WOULD HIGHLIGHT FOR THEIR COMPLEXITY OR STRATEGIC IMPORTANCE?**

Currently, the State of Nicaragua is executing interesting and ambitious projects, such as the expansion of the San Juan Pablo II Highway, a major road infrastructure project in the capital. This project passes through 33 neighborhoods, the most populous neighborhoods in the city of Managua, located on the southern side of the Juan Pablo II Highway, the road is traveled by 22 Public Urban Transportation routes, approximately 400 buses run on some segment of this road every day, serving over 250,000 Public Urban Transportation users who pass through the Juan Pablo II Highway. Additionally, more than 150,000 vehicles touch this road at some point during the day. Considering all of these indicators, we are witnessing one of the most significant road infrastructure projects and transportation needs in the city of Managua.

## NICARAGUA

### 2. STATE'S CONTRACTORS

#### **A. IN ITS JURISDICTION DOES THE STATE ACCEPT PROPOSALS AND ESTABLISH CONTRACTS WITH FOREIGN ENTITIES, OR DOES IT LIMIT ITS CONTRACTORS TO NATIONAL NATURAL AND LEGAL PERSONS?**

Nicaraguan state entities accept proposals and celebrate contracts with national and foreign natural and legal persons, having as a principle of state contracting to choose the proposal that is most advantageous to the State, without distinguishing the nationality of the proponent as a criterion for selection.

#### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO OFFER GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements for foreigners wishing to participate in procurement processes with the State in Nicaragua. Proposers must adhere to the terms and conditions set forth in the bidding documents that regulate the selection processes.

#### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO EXECUTE CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

Yes, there are. While the participation in public procurement processes does not require the incorporation of any type

of corporate entity, once the contract is awarded, State contractors in Nicaragua must have a corporate vehicle to the extent that, during the execution of the awarded contract, there would be ongoing activities in the country. Therefore, foreign legal entities will need to incorporate a corporate vehicle in the country or register an authorized branch or subsidiary to represent the foreign legal entity.

#### **D. DO STATE CONTRACTORS IN YOUR JURISDICTION HAVE TO REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE EXCEPTIONS TO THIS REQUIREMENT?**

As a rule, proponents and State contractors in Nicaragua must register in the State Suppliers Registry to participate in public selection processes. The State Suppliers Registry is a national registry administered by the Directorate of Public Sector Procurement, under the Ministry of Finance and Public Credit. Registration, renewal, and updates can be carried out virtually through the "Nicaragua Compra" website.

This requirement does not apply to foreign proponents who do not have a registered domicile or branch in the country.

### 3. INCENTIVES FOR CONTRACTING WITH THE STATE

#### **A. PROVIDE SOME OF THE MAIN RIGHTS THAT INDIVIDUALS OR ENTITIES WISHING TO CONTRACT WITH THE STATE HAVE**

Nicaragua's public procurement system includes provisions that require budget availability for initiating a public tender by the contracting state entities. This obligation translates into a contractual benefit as it establishes a budget for contract execution. Therefore, if state entities have payment obligations, they will have the necessary resources available.

Additionally, state entities have duties related to publicity and planning that allow their contractors and bidders to access information of interest for structuring their proposals and conducting market studies.

In Nicaragua, proponents and State contractors can submit proposals and execute contracts as plural structures, associating with more than one legal or natural person, without the need to establish a corporate entity in Nicaragua.

## 4. INFORMATION ABOUT THE STATE

### **A. DOES THE STATE CONDUCT PERIODIC PLANNING OF THE GOODS AND SERVICES IT NEEDS TO MEET ITS REQUIREMENTS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL OBLIGATION, OR IS IT A COMMON PRACTICE?**

Yes. State entities engage in multi-year and annual planning exercises (the latter being more specific) to consider the goods and services they need to acquire to meet their requirements. These exercises are in compliance with a legal obligation, which includes the requirement to annually publish a summary of the acquisitions that each entity

intends to carry out, outlining the contractual objects and maximum budgets allocated to each contract.

### **B. ARE THE STATE'S NEEDS AND ITS CALLS FOR ACQUISITIONS GENERALLY ACCESSIBLE TO THE PUBLIC?**

Yes. In adherence to the principle of transparency, state entities publish information about their calls for bids and contracts in progress on the Public Sector Procurement Management System. On the mentioned portal, every person can access and review the processes of interest within various sectors of the economy.

### **C. PLEASE DESCRIBE WHAT KIND OF PERSONS CAN ACCESS TO THE INFORMATION RELATED TO THE STATE ACQUISITION, THROUGH WHICH MEAN, AND IF THERE ANY COST ASSOCIATED WITH THIS PROCESS?**

Nicaragua Compra is a publicly accessible virtual platform, and its information can be accessed by anyone interested through the following link:

<https://www.nicaraguacompra.gob.ni/>

## 5. SELECTION MECANISMS

### **A. WHAT CRITERIA DOES THE STATE USE FOR THE SELECTION OF ITS CONTRACTORS?**



## NICARAGUA

As rule, state entities determine their contractors based on price and quality criteria. Each entity defines, through the rules of its calls for bids, the objective criteria on which to evaluate the price and quality of the proposals.

Exceptionally, for the procurement of consulting and oversight services, the main selection criterion for Nicaraguan state entities is quality, and price is not a selection criterion. Additionally, there are state entities that do not adhere to the public procurement regime, and the selection criteria for their contracts are established in their contracting manuals.

### **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE WILL OF EACH STATE CONTRACTING ENTITY?**

The selection criteria can vary in calls for bids of state entities that contract under a special procurement regime, typically when it comes to entities that, despite being state-owned, are subject to private law due to competition with the private sector in the economy, such as in the provision of public services like water supply and sewage.

The application of these criteria is established in Law No. 737 on Public Sector Procurement and its Regulations.

Additionally, contracts made by the public administration with funds from international organizations are subject to the procurement rules established by those entities.

### **C. ARE THERE ANY BENEFITS OR INCENTIVES TO PREFER DOMESTIC**

### **OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN A FOREIGN ENTITY ACCESS THESE BENEFITS?**

Yes, offers of goods and services of domestic origin may receive additional scoring and are also considered as a tiebreaker criterion. This condition can be verified by either a domestic or foreign proponent and consists of offering goods and/or services included in a register that certifies them as of domestic origin. This origin corresponds to the manufacture of all or part of the goods in the country and/or the incorporation of goods and services manufactured in Nicaragua.

### **D. IS IT POSSIBLE TO SUBMIT A PROPOSAL TO THE STATE IN A VIRTUAL MANNER, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS THAT REQUIRE HAVING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

Generally, proposals to state entities are submitted through the electronic public procurement system. This platform is transactional and allows for 100% virtual proposal submission, including the signing of the eventual contract with the successful proponent. In this regard, there is generally no need to have a physical presence, or a team located in the country for proposal submission to state entities. However, it is of utmost importance to have legal, technical, and financial guidance to ensure the submission of a strong proposal.

## 6. ALTERNATIVES FOR THE PARTICIPATION IN THE SELECTION PROCESS.

### A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?

Yes. Nicaragua's regulations include the option to submit proposals as a Consortium or a promise of a future partnership to participate in a procurement process or to execute the corresponding contract. Under these alternatives, interested parties are not required to establish a corporate vehicle such as a branch or subsidiary.

Temporary Unions and Consortia are plural structures with no limit on the number of members, and they share joint and several responsibilities for the proposal submitted to the State, except for the payment of any penalties in the execution of contracts, which, in the case of Temporary Unions, will fall exclusively on the member who committed the breached obligation.

### B. CAN NUMEROUS INTERESTED PARTIES EXECUTE JOINTLY A CONTRACT IN FAVOR STATE ENTITIES?

Yes, under the plural structures of Temporary Union and Consortium, interested parties can execute contracts for the benefit of state entities without the need for their members to necessarily establish a new corporate entity in Nicaragua. Once the project is awarded, temporary unions must be transformed into consortia.

### C. WHAT REQUIREMENTS MUST INTERESTED PARTIES FULFILL TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT FOR THE BENEFIT OF STATE ENTITIES?

Interested parties must enter into an agreement that does not entail the establishment of any type of corporate entity. Typically, public entities include in the procurement documents the format that sets out the general rules for participation in the execution of contracts through plural proponents.

## AUTHORS



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Experienced senior partner with a proven track record of working in the legal services industry. Expert in International Business. Strong legal professional with a master's degree in International Business with a focus on Mergers and Acquisitions at the Higher Institute of Law and Economics (ISDE) in Barcelona, Spain.



■ **PANAMA**



MORGAN & MORGAN

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With 100 years of an emblematic trajectory, Morgan & Morgan is a full-service Panamanian law firm, regularly assisting local and multinational corporations from different industries and recognized financial institutions, government agencies, and individual clients.

We have participated in most of the largest infrastructure projects in Panama, including all three existing lines of the Panama City Metro, the copper mining project Cobre Panama (the most significant private sector investment in Panamanian history), the Changuinola I hydroelectric power plant, the Gatun LNG power plant, and the development of the Penonomé Solar Project, the largest solar project in Central America.

With approximately 80 lawyers, Morgan & Morgan has the largest legal team in Panama, enabling us to provide our clients with legal services in a multidisciplinary and holistic manner. In addition, we are exclusive representatives in Panama of international networks, such as Terralex, ALFA International, World Services Group, and Employment Law Alliance. This allows us the capacity to advise clients globally in their most complex and multijurisdictional matters.

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## PANAMA

# MORGAN & MORGAN

Inocencio Galindo



Clarissa Vega



### 1. THE ROLE OF THE STATE IN THE MARKET

#### **A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET IN YOUR JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DOES STATE PROCUREMENT AMOUNT TO?**

The State plays an important role in the provision of goods and services necessary for the operation of government institutions and the delivery of public services to the public. The State, through various government entities, purchases a wide range of goods and services, ranging from infrastructure construction to the purchase of medical and educational supplies.

Regarding the proportion of Gross Domestic Product (GDP) that government procurement is equivalent to, specific figures may vary from year to year and will depend on economic and political factors. In general, it is estimated that government procurement in Panama can represent a significant percentage of GDP due to government investment in infrastructure projects and the acquisition of goods and services.

#### **B. WHAT PROJECTS IS THE STATE CURRENTLY CARRYING OUT (IN THE STRUCTURING, PLANNING AND/OR SELECTION PROCESS) THAT WOULD STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?**

Currently, projects such as the following are underway:

- Line 3 of the Panama Metro with an approximate value of USD\$ 2,844,9547, 293.60.
- Manuel Amador Guerrero Hospital with an approximate value of USD\$270,705,307.75.
- The Hospital City with an approximate value of USD\$ 999,810,775.06.
- The Fourth Bridge over the Panama Canal with an approximate value of USD\$ 2,138,903,171.59.
- Rehabilitation, Improvement and Maintenance by Performance Standards of the Pan-American Highway East (under the Public-Private Partnership modality) with a reference value of US\$ 46,660,645.00.
- Rehabilitation, Upgrading and Maintenance of the West Pan-American Highway (under the modality of Public-Private Partnership) with an estimated investment of

## PANAMA

US\$343,291,000.

- The Fourth Electricity Transmission Line (under the Public-Private Partnership modality) with an estimated investment of US\$696,350,816.

(Source: [www.panamacompra.gob.pa](http://www.panamacompra.gob.pa) y <https://enterector.gob.pa>)

## 2. GOVERNMENT CONTRACTORS

### **A. DOES THE STATE ACCEPT PROPOSALS AND ENTER CONTRACTS WITH FOREIGN ENTITIES IN YOUR JURISDICTION, OR DOES IT LIMIT ITS CONTRACTORS TO DOMESTIC, NATURAL, AND LEGAL PERSONS?**

The State accepts proposals and enters into contracts with foreign natural or legal persons. The Republic of Panama promotes the participation of foreign companies in its public procurement market and encourages competition to ensure efficiency and quality in the execution of projects and the provision of goods and services.

The legal and regulatory framework for public procurement, which includes Law 22 of 2006 and its amendments, establishes the procedures and requirements for the participation of national and foreign contractors in bidding processes and awarding of contracts.

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO OFFER GOODS OR SERVICES TO THE STATE? WHICH ONES?**

In the Republic of Panama, there are no exclusive requirements entirely for foreign companies. However, it is important to note that any entity, whether a natural person, legal entity or a consortium or accidental association, regardless of whether they are of national or foreign origin, must register as a supplier of the State before the General Directorate of Public Contracting.

Additionally, it is essential to point out that all documentation presented in a public act, if written in a language other than Spanish, must be translated into Spanish by an authorized public translator and have the proper apostille or legalization to be valid.

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGN INDIVIDUALS TO EXECUTE CONTRACTS FOR THE SUPPLY OF GOODS OR SERVICES TO THE STATE? WHICH ONES?**

For foreign individuals or legal entities to execute contracts, they must generally comply with the following additional requirements, which include:

1. Legal representation or establishment of a branch. In some cases, foreign persons may be required to establish legal representation in Panama through a branch, a subsidiary, or a corporation.

2. Single Taxpayer Registry. Register before the General Revenue Directorate of the Ministry of Economy and Finance and keep their tax obligations up to date, whether it is the payment of the single corporate tax, income tax return, if applicable, ITBMS, among others. Likewise, they are required to keep their accounting records.

3. Obtaining an Operations Notice. The corporation must obtain an Operations Notice, the granting of which is regulated by the Ministry of Commerce and Industries.

4. Social Security Fund and Ministry of Labor and Labor Development. If the company is going to hire personnel, it must register before the Social Security Fund and make the corresponding contributions in accordance with the provisions of the applicable legislation.

5. Registration before the Technical Board of Engineering and Architecture. National or foreign companies that intend to engage in Engineering and/or Architecture projects within the Republic of Panama must be registered before the Technical Board of Engineering and Architecture.

#### **D. ARE GOVERNMENT CONTRACTORS IN YOUR JURISDICTION REQUIRED TO REGISTER IN A PUBLIC REGISTRY AS GOVERNMENT SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

Contractors wishing to participate in public contracting processes must register before the General Directorate of Public Contracting as a supplier before this directorate to be able to present themselves as bidders in the different bidding processes.

### **3. INCENTIVES FOR CONTRACTING WITH THE STATE**

#### **A. INDICATE SOME OF THE MAIN RIGHTS THAT THOSE WHO INTEND TO CONTRACT WITH THE STATE HAVE.**

It is important to note that, in the Republic of Panama, the general principles governing public procurement are the following: transparency, economy, responsibility, effectiveness, publicity, efficiency, due process and equality of bidders, in line with the fundamentals that guide the administrative function.

Likewise, contractors seeking to enter into agreements with the Panamanian State have the following rights:

- Receive payments within the terms established in the bidding documents and in the corresponding contract.
- Receive default interest from the competent entity in the event of delays in payments.
- Request extensions in the contract execution term when the delay is attributable to circumstances not attributable to the contractor. In situations in which the delay is the responsibility of the contracting entity, the contractor has the right to obtain the extension without incurring the fine stipulated in the contract.

In conclusion, it is essential to emphasize that before issuing the call for a public procurement process for goods or services, the bidding entity must ensure that it



## PANAMA

has the necessary budgetary availability. This budgetary availability shall be evidenced in the corresponding file, clearly identifying the relevant budget item, and referring to it in the documentation related to the procurement. It is also important to emphasize that in public contracts, the economic equilibrium of the contract is maintained to guarantee the equality of rights and obligations established at the time of the contract. If this equilibrium is altered for reasons that have been duly and demonstrably established, the parties concerned shall immediately take the necessary measures to restore it.

### 4. STATE INFORMATION

#### **A. DOES THE STATE CARRY OUT PERIODIC PLANNING OF THE GOODS AND SERVICES REQUIRED TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL DUTY, OR DOES IT CORRESPOND TO A USUAL PRACTICE?**

The Republic of Panama, in accordance with the Fiscal Responsibility Law, is required to present the Strategic Government Plan. This plan encompasses the economic and social strategy, the five-year financial programming, and a five-year indicative public investment plan. These elements establish the criteria for directing public spending towards high-priority sectors, programs, and projects at the national level.

The Five-Year Investment Plan details the investment initiatives programmed by the entities comprising the

Non-Financial Public Sector. This plan is updated annually, in compliance with the provisions of the Fiscal Social Responsibility Law.

#### **B. ARE THE STATE'S NEEDS AND ITS CALLS FOR PROCUREMENT GENERALLY AVAILABLE TO THE PUBLIC?**

As previously mentioned, transparency represents an essential principle that guides public procurement in the Republic of Panama. This principle is established with the purpose of ensuring competition, equal opportunities, and the efficient use of public resources. In line with this premise, all public acts are of public access and are published in the Electronic Public Procurement System known as "PanamaCompra".

#### **C. PLEASE DESCRIBE WHAT TYPE OF INDIVIDUALS CAN ACCESS INFORMATION RELATED TO GOVERNMENT PROCUREMENT, BY WHAT MEANS AND WHETHER THERE ARE ANY COSTS ASSOCIATED WITH THIS PROCESS.**

The portal [www.panamacompra.gob.pa](http://www.panamacompra.gob.pa) provides free access to information on public procurement to any interested party, free of charge.

## 5. SELECTION MECHANISMS

### **A. WHAT CRITERIA DOES THE STATE USE FOR THE SELECTION OF ITS CONTRACTORS?**

The Law 22 of 2006 on Public Procurement in the Republic of Panama establishes several criteria that the State uses for the selection process of contractors in a bidding process. These criteria, which depend on the contractor selection procedure in question, are applied to evaluate the bidders' proposals and determine which is the best offer in terms of quality, price, and other relevant aspects. The main criteria used include technical, economic, administrative, and financial aspects, and the award will be made in accordance with the criteria established in the bidding documents.

### **B. CAN THE SELECTION CRITERIA, OR THE WAY THEY ARE APPLIED, VARY ACCORDING TO THE WILL OF EACH CONTRACTING STATE ENTITY?**

The selection criteria will depend on the contractor selection procedure chosen by the procuring entity. Among the types of bidding are: Minor Contracting, Public Bidding and Best Value Bidding. The procuring entity may not vary the evaluation criteria established by law.

### **C. ARE THERE ANY BENEFITS OR INCENTIVES TO PREFER DOMESTIC BIDS OVER FOREIGN PROPOSALS? IF SO, CAN A FOREIGNER ACCESS THESE BENEFITS?**

In the Republic of Panama, there are legal provisions that promote the preference for local companies in certain acts of selection of contractors and in the procurement of goods and services. These benefits and incentives are designed to encourage the participation of local and national companies in the public procurement process. These benefits are detailed below:

- Promotion of micro, small and medium-sized companies.
- Promotion of national companies in the acts of selection of contractors for the construction of works in Panama that do not exceed five million balboas (B/. 5,000,000.00), the bidding entities may carry out public acts exclusively for national companies, unless any of the applicants invoke an international agreement or treaty in force between their country of origin and the Republic of Panama.
- Bidding entities may carry out public acts. However, priority must be given to the viability, availability and quality of goods and services produced within the territory of the Republic of Panama.

### **D. IS IT VIABLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS THAT IMPLY HAVING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

In the Republic of Panama, the submission of proposals in public procurement processes has been modernized in recent years, and the electronic submission of proposals has been greatly facilitated.

## PANAMA

### 6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES

#### **A. CAN SEVERAL INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Yes, in Panama, two or more individuals in a selection process have the possibility of jointly submitting a proposal, by establishing a consortium or a joint venture.

#### **B. CAN SEVERAL INTERESTED PARTIES JOINTLY EXECUTE A CONTRACT IN FAVOR OF A STATE ENTITY?**

Yes, in Panama several interested parties may jointly execute a contract by establishing a consortium or joint venture. It should be noted that all members of the consortium or joint venture assume jointly and severally each and every one of the obligations arising from the proposal and the contract.

#### **C. WHAT REQUIREMENTS MUST BE FULFILLED BY THOSE INTERESTED IN SUBMITTING A PROPOSAL OR EXECUTING A CONTRACT, JOINTLY, IN FAVOR OF STATE ENTITIES?**

They must sign the consortium agreement in accordance with the requirements established in the bidding documents and it is important that the members of the consortium or joint venture designate a person to represent them in all aspects related to the proposal and the contract. They should also clearly establish the basic conditions that will govern their

internal relations.

These basic conditions include aspects such as the assignment of fiscal, civil, labor and any other type of liability that may arise because of public contracting. These conditions are essential to define the responsibilities of each party that integrates the consortium or accidental association among themselves, without prejudice to their joint and several liability before the State.

## AUTHORS



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Inocencio Galindo is a Senior Partner at Morgan & Morgan Legal and heads the Mining & Natural Resources, Project Development & Public Procurement, and Corporate Investigations, Compliance & Ethics practice groups. Inocencio is also highly recognized in the areas of Corporate & Commercial Law; Banking & Finance; and Mergers & Acquisitions.

He has over 25 years of experience and he has played a significant role in the development and financing of large infrastructure projects, such as Line 1, 2 and 3 of the Metro of Panama, the public transportation system Metro Bus, and road projects. He led the negotiation of the Refreshed Concession Agreement with the Government of Panama for the Cobre Panamá project, which represents an investment of over US\$10 billion, making it the largest private investment in Panama's history.

Inocencio was elected President of the Board of Directors of the Chamber of Commerce, Industries, and Agriculture of Panama for the 2017-2018; he served as Secretary of the Board of Directors of the National Council of the Private Enterprise (CONEP), and he is a board member of multiple companies.



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Clarissa Vega Ruiz is an associate in the Corporate Law Department of Morgan & Morgan Legal. She has more than 15 years of experience in the area of project development and financing, including management of infrastructure projects such as construction, public infrastructure and energy.

Prior to joining the Firm, Clarissa worked as the Legal Advisor in charge of the administration of subcontracts and the main contract for the "Project Fourth Bridge over the Panamá Canal", in the Panamá Fourth Bridge Consortium. She was also the Legal Advisor of the Public Financing Directorate of the Ministry of Economy and Finance of Panama, where she participated in milestones transactions such as Panama's first successful issuance of treasury bonds for US\$2 billion and its placement in the local capital markets. In the private sector, she worked as in-house counsel for private construction companies, advising on significant projects such as the Changuinola II hydroelectric power plant, Line 2 of the Metro of Panama, and the Madden-Colon Highway, among others.



■ PARAGUAY



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## PARAGUAY

# FIORO CARDOZO & ALVARADO

## 1. THE ROLE OF THE STATE IN THE MARKET

### A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?

According to information provided by the National Direction of Public Procurement (DNCP), the Paraguayan state annually awards contracts with an average value of USD 3,246,000,000 (three billion two hundred forty-six million US dollars), representing 8% (eight percent) of the GDP.

Annually, on average, there are 9,513 contract grants to 3,266 suppliers, both national and international.

With the enactment of Act 7021/22 “On Public Procurement and Supplies,” which came into force through Decree 9823 of 11/08/23, the aim is to update and modernize all state



Marianne Saavedra Escobar



Jean Sebastian Saavedra

purchases, making them more efficient through a supply chain that aims to establish and organize all stages of planning, programming, administration, and evaluation of purchases through technological and regulatory mechanisms, with the objective of enhancing public procurement as a factor for the country’s development.

### B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/OR SELECTION) THAT STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?

The last-mile connectivity project is currently suspended and under review by the new authorities (Paraguay underwent a change of government on August 15, 2023). This project is financed by the Excellence in Education and Research Fund, which aims to bring internet access to the remotest areas of the country, specifically in schools, hospitals, and police stations.

Another project is the Improvement and Expansion of Route PY01, which will be carried out through a Public-Private Partnership.

## 2. STATE CONTRACTORS

### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR ARE THE CONTRACTORS LIMITED TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?**

Yes. Act 7021/22 “On Public Procurement and Supplies” defines an offeror as any natural or legal person who submits a proposal under the terms of this Law, with the purpose of selling or transferring goods, performing a work, leasing a property, or providing a service requested by the contracting party.

It establishes that the offeror may be: (i) National: domiciled in the country, including branches of international parent companies established in the Republic of Paraguay; or (ii) Foreign: domiciled outside the national territory.

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements for foreigners wanting to participate in procurement processes with the Paraguayan state. Participants must comply with the conditions set forth in the tender documents and conditions.

However, if the company is not domiciled in the country, it must state in its offer that the prices presented in its

economic proposal are not quoted under conditions of unfair international trade practices in the form of price discrimination or subsidies.

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO PERFORM CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

There are no additional requirements for foreign individuals to execute contracts with the Paraguayan state. If the company is not domiciled in the country, it must establish an address within the territory of the Republic or designate a local representative for communication purposes.

### **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

Yes, any natural person, legal entity, or consortium formed or with an intention agreement that proposes to submit offers to the state must register. Act No. 7021/22 “On Public Procurement and Supplies” provides that the exception to registration would be offerors participating in excluded procedures; however, this has not yet been regulated.



## PARAGUAY

### 3. INCENTIVES FOR CONTRACTING WITH THE STATE

#### A. INDICATE SOME OF THE MAIN RIGHTS FOR ENTITIES THAT WANT TO CONTRACT WITH THE STATE.

Article 66 of Act No. 7021/22 establishes the main rights of suppliers:

- a) Full execution of the agreed-upon terms, except in cases of rescission, termination, unilateral modification established in this Law, its regulations, or the tender documents or the contract.
- b) Price adjustment to compensate for substantial cost structure changes in the contracts, as defined by the Law, regulations, or tender document or contract.
- c) Recognition of late payment interests, if the contracting parties are in arrears in payment. If the delay exceeds 60 (sixty) days, the supplier, consultant, or contractor shall have the right to suspend the contract, for reasons not attributable to them, subject to prior communication to the contracting party.
- d) Requesting termination of the contract due to the fault of the contracting party, in accordance with the terms of this Law.

### 4. STATE INFORMATION

#### A. DOES THE STATE CARRY OUT PERIODIC PLANNING TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO

#### A LEGAL OBLIGATION OR IS IT A COMMON PRACTICE?

Yes. This circumstance is due to a legal duty, and Act No. 7021 also establishes that negligence and imprudence can be penalized in accordance with the provisions of the Civil Service Law.

Previously, Act No. 2051, which was repealed by Act No. 7021, required contracting authorities to submit their annual plans no later than February 28 of each year. However, the current law does not establish a specific deadline for communication due to the lack of regulation.

#### B. ARE THE STATE'S NEEDS AND CALLS FOR ACQUISITIONS GENERALLY PUBLICLY ACCESSIBLE?

Yes. In accordance with the principle of transparency and publicity recognized by law, state entities publish information about their calls for bids and contracts in progress in the Public Procurement Information System (SICP) of the National Directorate of Public Procurement.

The information published in the SICP includes everything from preliminary studies for the procurement process to all events that occur during it, including inquiries, protests, observations, evaluations, and awards by the contracting public entity, as well as data on different suppliers.

#### C. PLEASE DESCRIBE WHAT TYPE OF ENTITIES CAN ACCESS INFORMATION RELATED TO STATE ACQUISITIONS, THROUGH WHAT MEANS, AND

## **IF THERE ARE ANY ASSOCIATED COSTS WITH THIS PROCESS.**

The SICP system is a publicly accessible virtual platform whose information can be accessed by any interested party through the following link:

<https://www.contrataciones.gov.py/buscador/licitaciones.html>

## **5. SELECTION MECHANISMS**

### **A. WHAT CRITERIA DOES THE STATE USE TO SELECT ITS CONTRACTORS?**

Depending on the market, the contract's purpose, and the life cycle of the goods, services, or public works, one or a combination of several criteria may be used, such as:

- a) Quality.
- b) Price.
- c) Life cycle costs of goods, services, or public works.
- d) Technical conditions.
- e) Experience of the bidder or their team.
- f) Delivery conditions of goods, services, or public works.
- g) After-sales service.
- h) Aesthetic or functional characteristics.
- i) Aspects of environmental, economic, and social sustainability.
- j) Innovation.

Contracting entities will adopt evaluation criteria that are consistent with the procurement procedure and the nature of the contract, and may evaluate compliance parameters, points, or percentages, or a combination thereof, to ensure

the best contracting conditions for the State.

### **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE CONTRACTING STATE ENTITY?**

Normatively, there should be no variation in selection criteria between state entities. However, in practice, such variation exists without the National Directorate of Public Procurement establishing uniform criteria.

### **C. ARE THERE BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN A FOREIGN ENTITIES ACCESS THESE BENEFITS?**

Yes. Bidders holding a certificate for nationally sourced products or services are entitled to a 10% price preference in international procurement procedures, according to Act 7021/22. Previously the preference price margin was up to 40%.

### **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS REQUIRING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

Yes. Bids may be submitted either physically to the contracting party or through remote electronic communication means established in the SICP, under the terms and conditions specified in the regulations to be issued by the DNCP.

## PARAGUAY

### 6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES

#### **A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Yes. In procurement procedures, natural and legal persons may participate jointly in a consortium without creating a separate legal entity, provided that the intention agreement for participation in the consortium contract precisely establishes the obligations of each party regarding the contract, as well as how compliance with the obligations will be enforced.

Consortium participants will designate one of the consortium members as the manager, who will be authorized to represent the consortium and sign offers and documents related to the procurement procedure. All consortium participants will be jointly responsible before the contracting party.

#### **B. CAN MULTIPLE INTERESTED PARTIES JOINTLY PERFORM A CONTRACT IN FAVOR OF A STATE ENTITY?**

Yes. Through the formation of consortiums, which does not imply the creation of a separate legal entity for the members forming it.

#### **C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?**

They must submit an intention agreement for participation in the consortium contract, precisely establishing the obligations of each party regarding the contract, as well as how compliance with the obligations will be enforced. Consortium participants will designate one of the consortium members as the manager, who will be authorized to represent the consortium and sign offers and documents related to the procurement procedure. All consortium participants will be jointly responsible before the contracting party.

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Marianne has been part of FCA Law Firm since 2016, she is an associate of the Firm and focuses her activities on digital commerce practices and new technologies, and public procurement processes. She is also in charge of the labor area of the firm.

She is a lawyer from the Catholic University “Nuestra Señora de la Asunción”, Paraguay, graduated with highest distinction. Likewise, she is notorious for the same university, and she is studying the Master of Business Law (MADE) and in the process of obtaining her doctorate, all from the same university.

Marianne has extensive experience in the new technologies and electronic commerce sector, she has worked with various clients for the incorporation of technologies in financial institutions and startups.



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Jean Sebastian has been part of the FCA Law Firm since 2016, he is an associate of the Firm and focuses his activities on the practices of Banking Law, Securities Market and public procurement processes. He is also in charge of the tax area of the firm.

He is a lawyer from the Catholic University “Nuestra Señora de la Asunción”, Paraguay. He also has an LLM in International Business Law from the Paris II Panthéon Assas University. Likewise, he has postgraduate specializations by the International Bureau of Fiscal Documentation (IBFD) and the Austral University.

Jean Sebastian has extensive experience advising financial institutions, financial associations, as well as clients operating in bid processes.





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# ESTUDIO MUNÍZ

## 1. THE ROLE OF THE STATE IN THE MARKET

### A. WHAT IS THE ROLE OF THE STATE IN THE MARKET IN YOUR JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF GROSS DOMESTIC PRODUCT DOES PUBLIC PROCUREMENT AMOUNT TO?

Taking into account the relevance of the budget allocated for the execution of procurement by the Peruvian State, it is important to consider the relationship between the execution of procurement expenditures by the State and the Gross Domestic Product (GDP). According to data published by the Ministry of Economy and Finance (MEF) and the Central Reserve Bank of Peru (BCRP), the share of public spending on goods, services and works, with respect to public spending of the State, remained, on average, around 32% and 37% from 2018 to 2022. Likewise, spending on procurement of goods and services in the case of local, regional and national governments represented 6.4% of GDP in 2022.

The Peruvian State contracts all types of goods, services, consultancy and execution of works, which are necessary for



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the satisfaction of its needs.

### B. WHAT PROJECTS IS THE PERUVIAN GOVERNMENT CURRENTLY CARRYING OUT (IN A PHASE OF STRUCTURING, PLANNING AND/OR SELECTION PROCESS) THAT WOULD STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?

Currently, the Peruvian State is executing several projects that stand out for their complexity and their focus on strategic sectors for the modernisation of the Peruvian economy, enhancement of infrastructure, creation of jobs to empower the productive apparatus and strengthening of the country's competitiveness to establish itself as a key player in the region.

For example, among the projects currently underway are the Chancay Multipurpose Port Terminal, the Muelle Sur Bicentenario Port Terminal, Line 2 of the Lima and Callao Metro, the Jorge Chávez International Airport Expansion,

the New Central Highway and the contracting of services for internet access with broadband projects, CAD initiatives, EPAD and Conecta Selva, which are projects that seek to reduce the digital divide in rural and isolated localities.

The main projects in the structuring stage are the Peripheral Road Ring, which aims to build a 34.8 km long motorway in the capital (Lima); the New San Juan de Marcona Port Terminal, a project that will provide port infrastructure specialising in mineral cargo in the south of the country; and the Historical Centre of Lima - Cerro San Cristóbal Cable Car Tourism Project, also in the capital, which aims to promote tourist spaces and services in the northern area of the city of Lima.

The main projects in the transaction or selection process stage are the “Longitudinal de la Sierra Tramo 4” road project, which includes the design, financing, construction, operation and maintenance of 965.2 km of roads in the departments of Apurímac, Ayacucho, Huancavelica, Ica and Junín; and the Huancayo Huancavelica Railway, which will improve and improve the quality and rehabilitate railways in the center of the country.

## 2. STATE CONTRACTORS

### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES OR DOES IT LIMIT ITS CONTRACTORS TO NATIONAL NATURAL AND LEGAL PERSONS?**

Yes, the Peruvian State accepts proposals and enters into contracts with national and foreign natural and legal persons, regardless of whether or not such foreign persons are domiciled in Peruvian territory.

Procurement is mainly carried out under the framework of the Government Procurement Act (LCE), and under the framework of the regulations applicable to the Private Investment Promotion System (public-private partnerships or PPPs). In the first case, the purpose of the procurement is the acquisition of goods, the provision of services and the design and/or execution of works (public works).

In the second case, procurement is carried out for the development of infrastructure projects or public services under the mechanism of Public-Private Partnerships (PPPs).

PPPs are implemented through long-term contracts, the duration of which may not exceed sixty years, except for shorter terms established in special regulations<sup>1</sup>. These contracts can be for concession, operation and maintenance, management, as well as under any other modality permitted by law. In these contracts, the ownership of the investments developed is maintained, reverted or transferred to the State, depending on the nature and scope of the contract. These contracts aim to design, finance, construct, operate and maintain public infrastructure projects, utilities, infrastructure-related services and public services, applied research and/or technological innovation.

For procurements under the LCE, the only condition is that the company is registered in the National Register of

<sup>1</sup>As in the case of port concessions, whose maximum term is thirty years, pursuant to the National Port System Act.



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Suppliers (RNP) administered by the Supervisory Body for State Contracting (OSCE).

In the case of PPP projects, registration in the RNP is not a mandatory requirement. The participation of natural persons as bidders is also not allowed. Bidders must be legal entities or consortiums formed by national or foreign legal entities.

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO BID FOR GOODS OR SERVICES TO THE STATE? WHICH ONES?**

In the selection processes carried out within the framework of the LCE, in addition to being registered in the RNP, foreign legal entities must have a legal representative in Peru registered in the Public Registries and physically present in the country.

However, when submitting their bids, both national and foreign contractors must take into account the following:

- Documents originating from abroad must be duly apostilled.
- Documents written in a language other than Spanish must be submitted in the original language and accompanied by a translation into Spanish.
- They must have duly accredited experience with contracts or purchase orders with their respective conformity issued by the client, or through proof of payment accrediting their cancellation.

In PPP processes, the bidding conditions establish the requirements to be met by the bidder who is a foreign legal

entity.

Among other documents, a simple copy of the instrument or certification attesting the existence and validity of the legal entity issued by the competent authority of the country of origin, the powers of attorney of the representatives duly drawn up or legalised before the competent Peruvian consulate, countersigned before the Peruvian Ministry of Foreign Affairs (with a simple translation into Spanish if issued in another language), is usually requested; or, with the apostille, if the bidder comes from a country signatory to the Convention Abolishing the Requirement of Legalisation of Foreign Public Documents of 5 October 1961 ("Hague Apostille").

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGN PERSONS TO EXECUTE CONTRACTS FOR THE SUPPLY OF GOODS OR SERVICES TO THE STATE? WHICH ONES?**

From the perspective of the LCE, there are no additional requirements to those described above. In the case of PPP processes, the requirements are set out in its terms and conditions.

### **D. ARE STATE CONTRACTORS IN YOUR JURISDICTION REQUIRED TO REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

In procurements carried out within the framework of the LCE, it is necessary that all suppliers interested in contracting with the Peruvian State and, therefore, in participating in the selection processes called by the State, previously register in the National Register of Suppliers (RNP).

The RNP is a national registry administered by the Supervisory Body for State Contracting (OSCE) and registration in this registry is done virtually. It should be noted that the validity of the registration in the RNP is indefinite as long as the legal and/or financial information of the company is updated and can be modified over time.

Particularly, in the event that the foreign company wishes to participate in selection processes convened by PETROLEOS DEL PERÚ S.A. (PETROPERÚ), a state-owned company, it must register in PETROPERÚ's Qualified Suppliers Database (BDPC).

In the event that the foreign company intends to participate in the selection processes convened by the Procurement Agency of the Armed Forces of Peru (ACFFAA), it must register in the Register of Foreign Market Suppliers of the ACFFAA.

It will not be necessary for the foreign company to register in the RNP if the purpose of the contract is to provide specialised support in legal, economic, financial and technical matters during the execution of a PPP contract.

Likewise, it is not necessary for bidding companies to be registered in the RNP or in any other registry in order to participate in project tenders through the PPP mechanism.

### 3. INCENTIVES FOR CONTRACTING WITH THE STATE

#### A. INDICATE SOME OF THE MAIN RIGHTS THAT THOSE WHO INTEND TO CONTRACT WITH THE STATE HAVE?

The public procurement system in Peru promotes the plurality of bidders and freedom of competition, therefore, suppliers that intend to contract with the State have the legal guarantees to be able to participate under conditions of effective competition.

Furthermore, in Peru there is the OSCE, a government entity whose purpose is to supervise the procurements that State entities carry out under the provisions of the LCE. Therefore, bidders have the right to turn to the OSCE when there is evidence of a violation of the regulations applicable to government procurement in order to take the respective measures.

In addition, during the execution of contracts, State contractors may request the resolution of their disputes through conciliation or arbitration. In the case of PPP contracts, arbitration is the way to resolve disputes arising between the Peruvian State and the investor.

### 4. STATE INFORMATION

a. Does the State carry out regular planning of the goods and services required to meet its needs? If so, is this a legal duty, or is it a common practice?

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Yes, in the framework of procurement under the LCE, state entities are legally obliged to formulate an Annual Procurement Plan (PAC) in which the requirements for goods, services and works necessary to fulfil their objectives and activities for the year must be established in advance.

In those cases in which the contracting is carried out under the PPP mechanism, public entities, by legal obligation, must include the projects to be executed in the Multiannual Report on Investments in Public-Private Partnerships.

### **B. ARE THE NEEDS OF THE STATE AND ITS CALLS FOR PROCUREMENT, AS A GENERAL RULE, PUBLICLY AVAILABLE?**

Yes, the LCE states that for the purposes of publicity and transparency, the Annual Procurement Plan is published on a virtual platform called the Electronic State Procurement System (SEACE) and on the institutional web portal of the respective Entity.

Likewise, the calls for tenders for all procurements carried out by the State under the LCE are published in the SEACE, where the schedule and rules that will govern the procurement process are set out.

In the event that the public entity determines that it will execute a project under the PPP modality, the Multiannual Public-Private Partnership Investment Report is published on the entity's website and on the website of the Ministry of Economy and Finance.

The stage of the investment projects carried out through

PPPs is published on the website of the Private Investment Promotion Agency - Proinversión.

### **C. PLEASE DESCRIBE WHO IS ALLOWED TO ACCESS PUBLIC PROCUREMENT-RELATED INFORMATION, THROUGH WHICH MEANS AND WHETHER THERE ARE ASSOCIATED COSTS.**

In the framework of the LCE:

The SEACE is a virtual platform of public access whose information can be consulted by any interested party through the following link:

<https://prod4.seace.gob.pe/openegocio/#/georeferenciacion>

In this link, they can register their email address in order to receive notifications about business opportunities announced by Peruvian State entities.

Additionally, any interested party may review the Annual Procurement Plan (PAC) of each Peruvian State Entity:

<https://prod2.seace.gob.pe/pac3-publico/pages/buscadorPACpublico.xhtml>

In the framework of PPPs:

Notwithstanding the fact that the Multiannual Public-Private Partnership Investment Report is published on the web portal of each entity, the projects are also published on the web portal of the Ministry of Economy and Finance, which can be accessed free of charge:

[https://www.mef.gob.pe/es/?option=com\\_content&language=es-ES&Itemid=101579&lang=es-ES&view=article&id=6049](https://www.mef.gob.pe/es/?option=com_content&language=es-ES&Itemid=101579&lang=es-ES&view=article&id=6049)

## 5. SELECTION MECHANISMS

### A. WHAT CRITERIA DOES THE STATE USE FOR THE SELECTION OF ITS CONTRACTORS?

In procurements carried out under the LCE:

As a general rule, state entities select their contractors on the basis of price criteria and technical conditions. All bids, in order to be considered valid, must comply with the technical requirements or terms of reference of the object of the procurement; however, after this filter, the determining evaluation factor will be the price and the experience of the bidder to determine the winner of the process.

However, particularly in some selection procedures, the entities - on an optional basis - may establish additional evaluation factors (improvement of technical specifications, ISO certifications, social certifications, environmental certifications, etc.), which provide additional points that will influence the determination of the winner.

In contracts awarded under the PPP modality:

The bid is awarded to the proposal that complies with the selection criteria established in the bidding conditions. Some of these are: lower co-financing, higher retribution to the State, service levels, tariff level and its structure, the

proposed technical solution, additional investments or services, and the lowest present value of the revenues. The competition factors are set out in the terms and conditions of the relevant selection process.

### B. CAN THE SELECTION CRITERIA, OR THE WAY THEY ARE APPLIED, VARY ACCORDING TO THE WILL OF EACH PROCURING STATE ENTITY?

In procurements carried out under the LCE:

As mentioned in the previous point, each entity may optionally add evaluation factors to provide additional points on top of the price, which is the evaluation factor by antonomasia and of greater preponderance.

However, these criteria are provided for in the standard conditions approved by the OSCE, so that suppliers have the possibility of being aware of these criteria which, optionally, may be added by the State entities:

- Delivery time
- Environmental and social sustainability certifications
- Social protection and human development practices
- Certifications attesting to their integrity in public procurement
- Commercial guarantee
- Availability of services and spare parts
- Training
- Improvements to technical specifications

In PPP procurements:

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Depending on the nature of the investment to be executed, the public entity may establish other selection criteria, which, however, must be included in the bidding conditions.

### **C. ARE THERE BENEFITS OR INCENTIVES TO PREFER DOMESTIC BIDS OVER FOREIGN BIDS? IF SO, IS A FOREIGNER ELIGIBLE FOR SUCH BENEFITS?**

Under the principle of equal treatment, no benefit is granted to domestic suppliers over foreign ones.

Notwithstanding the aforementioned, within the framework of the LCE and only in the case of the contracting of services in general and consultancies (for a maximum amount of S/ 200,000.00) and in the case of works that do not exceed S/ 900,000.00, as well as the execution of works that are provided or executed outside the province of Lima and Callao, a bonus equivalent to ten percent (10%) of the total score obtained may be granted to bidders domiciled in the province where the service is provided or the work is executed, or in the adjoining provinces, whether or not they belong to the same department or region.

Likewise, in those selection procedures of the LCE that correspond to Simplified Awards, a bonus equivalent to five percent (5%) of the total score obtained may be assigned to those bidders who have the status of micro and small companies, provided that they can prove that such status has been granted by the competent authority. This provision extends to the items of a Licitación Pública o Concurso

Público, the amount of which corresponds to a Simplified Award.

### **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS THAT IMPLY HAVING STAFF IN YOUR JURISDICTION FOR THAT PURPOSE?**

Proposals for selection procedures convened under the LCE are submitted virtually (electronically), through the Electronic State Procurement System - SEACE.

However, in the case of procurements called under different procurement regulations, for example, those called by PETROPERU or ACFFAA, the submission of proposals shall be governed by the provisions applied by such institutions, which may require the submission of proposals in person.

Notwithstanding the above, it should be noted that contracts may be signed in person.

In the case of proposals submitted for the execution of PPP projects, these must be physically delivered to the public entity in a sealed envelope, as established in the terms and conditions of the respective tender.

## 6. ALTERNATIVES FOR PARTICIPATION IN SELECTION PROCESSES

### A. CAN SEVERAL INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?

Yes, Peruvian regulations allow participation in selection procedures through consortia.

If the contracting is carried out under the provisions of the LCE, all members of the consortium must be registered in the RNP. Such registration is not required if the consortium is formed to execute a PPP project.

Likewise, it must be taken into account that the members of the consortium are jointly and severally liable for the obligations to the contracting entity, with the exception of certain penalties that are the exclusive responsibility of the member that has committed to the obligation not fulfilled in the consortium promise or contract.

### B. CAN SEVERAL INTERESTED PARTIES JOINTLY EXECUTE A CONTRACT IN FAVOUR OF A STATE ENTITY?

Yes, under the consortium modality.

### C. WHAT REQUIREMENTS MUST BE FULFILLED BY THOSE INTERESTED IN SUBMITTING A PROPOSAL OR EXECUTING A CONTRACT, JOINTLY, IN FAVOUR OF STATE ENTITIES?

In procurements carried out under the LCE:

First of all, all those interested in forming a consortium must be registered in the RNP. Also, in order to formulate the proposal in the specific selection procedure, they must sign a consortium promise, whereby they undertake that, in case they are awarded the contract, they will formalise the formation of the consortium through the respective contract; the terms and conditions of the selection procedure include a pre-established format of the consortium promise that must be submitted.

Finally, the particular conditions or restrictions established in the documents of the specific selection procedure must be taken into account, for example, the limit on the number of members of the consortium or the minimum percentage of participation to accredit experience.

In contracting under the PPP modality:

PPP regulations do not require consortium members to register in the RNP.

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However, it is usual that the bidding conditions require the presentation of forms signed by the legal representatives of each of the members of the consortium, in which they state their intention to participate jointly in the tender, and confirm their existence and joint assumption of responsibilities in the bidding process. Furthermore, the regulations require that, before executing the PPP agreement, the consortium members must incorporate a new company where they are required to maintain a share equal to the one they accredited for the consortium, during the bidding phase.

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## URUGUAY

# OLIVERA ABOGADOS



Federico Rocca Temesio



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### 1. THE ROLE OF THE STATE IN THE MARKET

#### **A. WHAT ROLE DOES THE STATE PLAY IN THE MARKET WITHIN ITS JURISDICTION? IF THESE FIGURES ARE PUBLIC, WHAT PROPORTION OF THE GROSS DOMESTIC PRODUCT DO STATE ACQUISITIONS REPRESENT?**

The Uruguayan State acquires all types of goods and services. There are no restrictions for Governmental entities to acquire specific goods and services. Depending on the specialization, functions, and objectives of each state entity, acquisitions are determined by the nature of their needs to be met.

Even though, there are no processed figures available regarding State investments and their impact on the Gross Domestic Product (GDP), in the Explanatory Memorandum (“Exposición de Motivos”) prepared by the Ministry of Economy and Finance for the Bill of Law on Accountability and Balance of Budget Execution corresponding to Fiscal Year 2022, the year 2022 was a record year in terms of investment in infrastructure which, added to public investment in housing, reached USD 2,478 million executed in the year, reaching

3.5% of GDP. For the entire five-year period 2020-2024, investment in infrastructure, together with public investment in housing, is projected to reach US\$11,476 million.

#### **B. WHAT PROJECTS IS THE STATE CURRENTLY UNDERTAKING (IN THE PROCESS OF STRUCTURING, PLANNING, AND/OR SELECTION) THAT STAND OUT FOR THEIR COMPLEXITY OR STRATEGIC INTEREST?**

Currently, the Uruguayan State plans to execute interesting and ambitious projects, such as joint projects with Brazil that include the binational airport of Rivera, the dry port in that city, the Río Branco – Yaguaron bridge and the waterway Laguna Merín - Laguna de los Patos and Paraguay – Parana, a public international bid to construct a luxury hotel and casino in La Paloma, Rocha, the development of an open technology lab. Moreover, the Government has already expressed interest in a strategic area: shifting of the energetic production matrix in Uruguay, focusing on the energy production based on green hydrogen.

## 2. STATE CONTRACTORS

### **A. IN YOUR JURISDICTION, DOES THE STATE ACCEPT PROPOSALS AND ENTER INTO CONTRACTS WITH FOREIGN ENTITIES, OR ARE THE CONTRACTORS LIMITED TO NATIONAL INDIVIDUALS AND LEGAL ENTITIES?**

The Uruguayan governmental entities accept proposals and enter into contracts with both national and foreign individuals and legal entities, under the guidance of the principle of public contracting of choosing the proposal that is most advantageous for the State, without considering the nationality of the bidder as a selection criteria, unless the bidding documents provide that a preference will be granted in the price of goods, services and public work that qualify as national which are those that have a minimum margin of national origin equal to 35% (see paragraph 5 (c) below).

### **B. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO SUBMIT BIDS FOR GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

As a general rule, the foreign individuals and entities must comply two additional basic requirements: (i) to register with the Registry of State Suppliers (Registro Único de Proveedores del Estado (“RUPE”)) and (ii) to possess habituality in the area of commerce or the industry related to the contract or if it is a new enterprise to demonstrate solvency and responsibility. The RUPE registration requirement may be exempted in the

case of contracts with the Industrial and Commercial Public Entities and Services in respect of certain goods and services of exclusive supply.

The offers must be written in Spanish; however, the specific bidding document may authorize the submission of brochures, catalogues, etc., in foreign language, with the State reserving the right to request the translation to Spanish at any time.

### **C. ARE THERE ANY ADDITIONAL REQUIREMENTS FOR FOREIGNERS TO PERFORM CONTRACTS FOR THE PROVISION OF GOODS OR SERVICES TO THE STATE? WHAT ARE THEY?**

The bidders must fix a legal domicile in the country, which must be registered with RUPE. The specific bidding document shall indicate if it will also be necessary for the foreign companies to have commercial representation in the country or fix domicile therein to participate in the public contracting process. Once a contract is awarded, contractors providing goods and services to Uruguayan governmental entities should hold a corporate vehicle (e.g. a branch or subsidiary) for the performance of the awarded contract, considering that they will carry out permanent activities in the country. Thus, foreign legal entities would need to incorporate a corporate vehicle in the country or register an authorized branch to represent the foreign legal entity.

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### **D. MUST STATE CONTRACTORS IN YOUR JURISDICTION REGISTER IN A PUBLIC REGISTRY AS STATE SUPPLIERS? IF SO, ARE THERE ANY EXCEPTIONS TO THIS REQUIREMENT?**

Yes, the parties interested in contracting with the State must register with RUPE and the Public State Entities cannot enter into contracts with suppliers that are not registered therewith. RUPE is a national registry managed by ARCE. The registration, proof and update of the supplier's information is its own responsibility and is done through the internet. Although some data may be amended online, in some cases it may be required to attend a personalized attention point so that an officer may verify the uploaded information. The certified notarial documents must, also, be certified by a notary acting in the government office. Foreign documents must be duly legalized and translated according to the law, in original or certified copy as applicable.

The regulations issued by the Executive Branch may exempt from the registration obligation those situations related to contracts of a reduced amount, auctions, emergencies, foreign contracting parties without a domicile in the country and other special situations that may justify it.

### **3. INCENTIVES FOR CONTRACTING WITH THE STATE**

#### **A. INDICATE SOME OF THE MAIN RIGHTS FOR ENTITIES THAT WANT TO CONTRACT WITH THE STATE.**

The Uruguayan public procurement system includes provisions requiring budget availability to initiate a public bidding process by the governmental contracting entities. This obligation translates into a contractual benefit for the performance of State contracts to the extent that it defines a budget for the performance of the contracts; therefore, if governmental entities have payments allocated, they will have the necessary funds available.

Additionally, governmental entities have obligations of publicity and planning, which allow their contractors and bidders to access information of interest to structure their proposals and/or conduct market studies.

Finally, as detailed in paragraph 6, public bidders and contractors of the Uruguayan State can submit proposals and execute contracts as plural structures, associating more than one entity or individual without the need to incorporate a corporate vehicle in Uruguay.

### **4. STATE INFORMATION**

#### **A. DOES THE STATE CARRY OUT PERIODIC PLANNING TO MEET ITS NEEDS? IF SO, IS THIS CIRCUMSTANCE DUE TO A LEGAL OBLIGATION OR IS IT A COMMON PRACTICE?**

Yes. According to the requirements of the applicable legal regulations, all the governmental entities with the exception of the municipal governments, must prepare and publish their annual contracting plans pursuant to the requirements

detailed in the said regulations. The plans shall detail the information regarding the competitive procedures for the acquisition of goods and services that each governmental entity estimates that it will carry out during the relevant year. Its disclosure and management shall be under the charge of the contracting entity through the electronic platform developed and managed by ARCE.

### **B. ARE THE STATE'S NEEDS AND CALLS FOR ACQUISITIONS GENERALLY PUBLICLY ACCESSIBLE?**

Yes, the state entities must publish their yearly purchases plan in the website held by ARCE. The calls for the bids are freely available for the public.

### **C. PLEASE DESCRIBE WHAT TYPE OF ENTITIES CAN ACCESS INFORMATION RELATED TO STATE ACQUISITIONS, THROUGH WHAT MEANS, AND IF THERE ARE ANY ASSOCIATED COSTS WITH THIS PROCESS.**

The information regarding the open calls for purchases by the State may be freely accessed by the public in ARCE's website through the following link: <https://www.comprasestatales.gub.uy/consultas/>

## **5. SELECTION MECHANISMS**

### **A. WHAT CRITERIA DOES THE STATE USE TO SELECT ITS CONTRACTORS?**

The specific document that may govern the contracting administrative process together with the general terms of

reference of contracting, shall establish objective evaluation criteria, according to one of the following systems:

- i. Determination of the factor or factors (quantitative or qualitative), with the possibility of including the price as the quantitative factor, as well as the assessment of each of them, for purposes of determining the technical qualification assigned to the offer, including in this assessment the experience and expertise of the offeror; or
- ii. Satisfaction of minimum requirements, and subsequent use in respect of those who are compliant therewith, of the application price factor exclusively, or another quantitative factor, provided that it has been set forth in the terms of reference that govern the invitation for the bid.

### **B. CAN THE SELECTION CRITERIA, OR THEIR APPLICATION, VARY ACCORDING TO THE CONTRACTING STATE ENTITY?**

No, the selection criteria set forth in the bidding documents for the public selection processes cannot vary at the discretion of the contracting entity.

### **C. ARE THERE BENEFITS OR INCENTIVES TO PREFER NATIONAL OFFERS OVER PROPOSALS FROM FOREIGN ENTITIES? IF SO, CAN A FOREIGN ENTITY ACCESS THESE BENEFITS?**

Yes, the general bidding document for the bid may provide that a preference margin will be granted in the price of



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goods, services and public works that qualify as national which are those that have a minimum national origin margin equal to 35%. The preference margin that governs the public selection processes generally equals to 8% over the price of the good, services, labor and/or national materials and it is applicable as long as there is parity of quality or of aptitude with the goods, services and public works that do not qualify as national. The preference margin is not applicable in the contracts and acquisitions of goods and services of the Public Entities and Services of the industrial, commerce and financial domain, devoted to services which are provided under free enterprise regimes.

In addition, it should be noted that in 2008 the Program of Public Contracting for Development was created, in which context regimes and procedures of special contracts could be employed, adequate to the objectives of developing national suppliers, in particular, micro, small and medium sized companies and small agribusiness producers and stimulating the scientific and technological development and the innovation. In the framework of the program, preference margins in the price and market quotas in favor of national producers and suppliers can be employed. In this context the following sub-programs were created:

- i. Public Contracting Subprogram for the Development of the Micro, Small and Medium Enterprises, which is under the management of the Ministry of Industry, Energy and Mining, through the National Office for the Artisan, Small and Medium Enterprises.
- ii. Public Contracting Subprogram for the Development

of Small Agribusiness Producers, which shall be under the management of the Ministry of Livestock, Agriculture and Fisheries.

- iii. Public Contracting Subprogram for the Scientific and Technological Development and the Innovation, which is under the management of the National Agency for the Investigation and Innovation.

### **D. IS IT FEASIBLE TO SUBMIT A PROPOSAL TO THE STATE VIRTUALLY, OR WILL IT BE NECESSARY TO SUBMIT PHYSICAL DOCUMENTS REQUIRING A TEAM IN YOUR JURISDICTION FOR THAT PURPOSE?**

Yes, it is feasible to the extent that the respective bidding documents provide for the authorization given that the offerors must submit their offers according to the terms and conditions set forth therein, and the relevant governmental entity may fix the formalities that will apply in each case. The offers could be submitted personally against receipt, in the place selected for that purpose, or by mail, fax, online through the websites for state purchases or other remote electronic communication means. According to the regulations in force and effect, it is viable that the contracting process be completely electronic.

Thus, there is generally no need to have a domicile or a team located in the country for the submission of a proposal to state entities. However, it is of utmost importance to rely on local legal, technical, and financial advice that enables the



submission of any document in person and of a complete proposal that may fulfill all the formal and substantive requirements.

## 6. ALTERNATIVES FOR PARTICIPATING IN SELECTION PROCESSES

### **A. CAN MULTIPLE INTERESTED PARTIES IN A SELECTION PROCESS JOINTLY SUBMIT A PROPOSAL TO A STATE ENTITY?**

Yes. The offerors must inform about their intention of forming a consortium (“consorcio”) at the time of submitting their offer.

The consortium is a plural structure, without restrictions as to the number of members, in which each member must carry out its activity according to the agreed conditions, assuming personal liability vis-à-vis the third party for the obligations incurred in respect of the part of the public work, services or supplies under its charge, without joint and several liability unless it is agreed otherwise.

In addition, it is normal usage for the interested parties to incorporate a new special purpose vehicle for the sole objective of submitting their bid in the bidding process before governmental entities.

### **B. CAN MULTIPLE INTERESTED PARTIES JOINTLY PERFORM A CONTRACT IN FAVOR OF A STATE ENTITY?**

Yes, under plural structures such as the consortium or the incorporation of a special purpose legal vehicle (commercial company, etc.), the interested parties can jointly perform contracts in favor of state entities.

### **C. WHAT REQUIREMENTS MUST INTERESTED PARTIES MEET TO JOINTLY SUBMIT A PROPOSAL OR EXECUTE A CONTRACT IN FAVOR OF STATE ENTITIES?**

The interested parties must execute a consortium agreement with the content required by the Uruguayan Business Companies Law N° 16.060 and register it with the Legal Entities Registry – National Registry of Commerce Section and make the respective filing with the minimum content required by that law. The consortium does not constitute a corporate vehicle with legal capacity.

In the aforesaid case of the typical consortium each of its members must independently register with RUPE depending on the type of legal entity they represent. It is important to note that in all cases, except for express exemptions set forth in the regulations in force and effect, the State supplier must be registered with RUPE. In case of an “atypical consortium”, that is, with Tax Identification Number (RUT) in DGI the de facto company denominated “consortium” must be registered with RUPE through the respective RUT number granted by the DGI.

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Federico is the Firm's Banking and Finance Partner. As a specialist in banking and securities law, he regularly assists local and foreign financial institutions, and intervenes in the structuring of financing and issuance of securities operations. He is permanent counsel to Uruguay's Electronic Stock Exchange (BEVSA for its initials in Spanish) and has had a key role in leading operations in the financial markets in the last years, including the financing of the main public infrastructure projects. He attained his JD at the Universidad Católica del Uruguay and is an Assistant Professor of Banking and Commercial Law in said university



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A photograph of several people in business suits sitting around a table, with their hands clasped or resting on the table. The entire image is overlaid with a semi-transparent green filter. In the top left corner, there is a small white icon consisting of a square with a smaller square inside it, positioned above the main title.

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