



# PUBLIC PROCUREMENT IN CENTRAL AMERICA GUIDEBOOK

AUGUST 2021



COSTA RICA



EL SALVADOR



GUATEMALA



HONDURAS



NICARAGUA



PANAMA

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# PUBLIC PROCUREMENT PROCESS

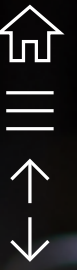
- 1 Register as supplier
- 2 Search for public procurement opportunities in the official web site of each Country
- 3 Receive invitation to participate
- 4 Submit a bid
- 5 Receive award notification
- 6 Where appropriate, appeal against the awarding act
- 7 Sign the Administrative Contract

**CONGRATULATIONS,  
YOU WON THE BID!**





# PUBLIC PROCUREMENT IN COSTA RICA



## COSTA RICA

## 1.CURRENT REGULATORY FRAMEWORK

## 1.1 Laws and regulations

- Political Constitution
- Administrative Contracting Law No. 7494.
- General Law for the Concession of Public Works and Public Services, Law No. 7762.

In accordance with the General Law on Public Procurement, No. 9986 of 27 May 2021, the law will be abrogated. . As per transitional provision XI of the aforementioned law, the Law 9986 will come into force 18 months after its publication, on 1 December 2022, so the repeal will take place as of that date. See below Section 5, page 12 of this guide for an overview of the new regulations.

## Regulations relevant to Administrative Contracting

Regulation to the Contracting Law	Executive Decree 33411.
Regulations for Private Initiative Projects for Public Works Concessions or Public Works Concessions with Public Service	Executive Decree 31836-MOPT of July 7, 2004.
Regulations for Public-Private Collaboration Contracts	Executive Decree 39965-H of December 22nd, 2016.
Regulations for the Development, Promotion and Management of Public-Private Partnerships for Public Sector Development	Executive Decree N° 40933-MEIC-MIDEPLAN
Regulations for the Development, Promotion and Management of Public-Private Partnerships for Public Sector Development	Executive Decree N° 40933-MEIC-MIDEPLAN
Regulations of the Special Administrative Contracting Regime of INCOFER	Executive Decree 40827-MOPT of December 20th, 2017.
Regulations for the use of the integrated public procurement system "SICOP".	Executive Decree 41438-H of January 18th, 2019.
Amendments to Article 145 of the Regulations to the Administrative Contracting Law	Executive Decree 40898-H-MEP-MOPT of February 27th, 2018.
Regulations for the Contracting Processes of the Companies of the Costa Rican Institute of Electricity	
Banco de Costa Rica's internal regulations for administrative contracting	Session 16-2021 Article VIII of April 13th, 2021.
Internal regulations for administrative contracting of the Patronato Nacional de la Infancia (National Child Welfare Agency)	Ordinary session 2021-011 of April 6th, 2021.
Procurement Regulations for Goods, Services and Construction of the Costa Rican Institute of Aqueducts and Sewerage.	
Regulations of the Contracting Bodies of Banco Nacional de Costa Rica	





Internal Regulations for Administrative Contracting of the Municipality of Esparza	
Internal Regulations for Administrative Contracting of the Municipality of Garabito	
Internal regulations for administrative contracting of the Municipality of Cantón Central de Alajuela.	
Regulations of the National Learning Institute for contracting based on the principles of administrative contracting with funds from the Development Banking System.	
INS RED DE SERVICIOS DE SALUD S.A.'s Internal Regulations for Administrative Contracting.	
Procurement and contracting regulations of the company Servicios Públicos de Heredia S.A.	
Internal Regulations for Contracting of the Institute for Municipal Development and Advisory Services (IFAM)	
Internal Regulations for Administrative Contracting of the Public Transportation Council	
Complementary administrative contracting regulations of the Banco Popular y de Desarrollo Comunal conglomerate.	
Model of distribution of competencies in administrative contracting and awarding powers of the CCSS.	

## 1.2. Administrative contracting of public construction and infrastructure

For the construction of public works and infrastructure, public bidding, abbreviated bidding or direct contracting will be used, depending on the amount of the contract and the Administration's budget<sup>1</sup>.

## 1.3. Administrative contracting for the acquisition of assets and services

For the procurement of supplies and services, public bidding, abbreviated bidding or direct contracting will be used, depending on the amount of the contract and the budget of the contracting Administration.

## 2. PROCEDURES FOR ADMINISTRATIVE CONTRACTING

### 2.1 Ordinary Administrative Contracting Procedures

#### 2.1.1 Public Bidding

Public bidding is the contracting procedure that must be used a. when the amount is greater than the amount listed; b. when it is the sale or disposal of goods, movable or immovable; c. in the leasing of public property; d. in the concession of public facilities. If it is in the public interest to do so, the Administration may carry out an international public bidding process.

#### 2.1.2 Abbreviated Bidding and Direct Contracting

Abbreviated bidding is used for medium-value contracts of limited volume and economic importance. Direct contracting, on the other hand, is an exceptional procedure in which urgency requires the use of a more expeditious means, despite the fact that in theory it is exceptional, 81% of the administrative contracting procedures are carried out through direct contracting.

1. The limits according to the amount of the contract and the budget of the administration can be reviewed at the following link: <https://cgrfiles.cgr.go.cr/publico/docsweb/documentos/ca/r-dc-06-2021-limites-ca.pdf>



Characteristics	Public Bidding	Abbreviated Bidding	Direct Contracting
Advertising	The invitation to participate, modification to the bidding documents and the award ceremony will be published in the Official Gazette "La Gaceta" and in SICOP.	SICOP <sup>2</sup>	SICOP
Possibility to object to the poster	Yes	Yes	No
Total of bidders to invite	To all those interested in offering	Minimum of 5 accredited suppliers in the supplier registry. If there are not 5 accredited suppliers, the invitation must be made through La Gaceta.	Minimum of 3 potential bidders from the supplier registry. If there are not enough registered suppliers, companies that are not in the registry may be invited.
Number of bids analyzed	All the bids received	Only bids from invited suppliers. Unless they were invited through La Gaceta.	All bids submitted by registered suppliers.
Deadline for submitting bids	Minimum of 15 working days	Minimum of 5 days and a maximum of 20 working days.	Minimum of one working day, and a maximum of 5 working days.
Deadline to award	It cannot be more than twice the amount established for the receipt of bids.	It cannot be more than twice the amount established for the receipt of bids.	10 days, extendable for the same period.
Appeals against the act of awarding the contract	Appeal Procedure	Depending on the amount, appeal procedure or appeal of revocation.	Appeal for reconsideration against the official or administration that issued the award decision

2. Link to enter SICOP: <https://www.sicop.go.cr/index.jsp>

### 2.1.2 Auction

This is an ordinary procedure used by the Administration to sell or lease movable or immovable property, when it is considered to be the most convenient way. In this procedure, a base price is set and the contract is awarded to whoever makes the best offer, through a bidding process that takes place in person or by electronic means when possible.

The auction has the following procedure:

- Appraisal of assets to establish a base price.
- Publication of the invitation by means of SICOP, without prejudice of the fact that an invitation may also be published in La Gaceta and/or a national circulation media. The invitation must indicate: goods to be auctioned, nature and main characteristics, base price, place, date and time when the goods to be auctioned may be inspected, which must be available at least five working days prior to the date of the auction, liens or taxes affecting them, time and date of the auction and any other relevant information.
- Between the date of the invitation and the date of the auction there must be a minimum period of 10 working days.
- The bids are binding on the bidder. The best bid will be awarded and the second-best bid will be recorded in the event that the successful bidder fails to comply with his obligations.
- Identification of the bidders submitting bids.
- Payment of the performance bond by the successful bidder, which corresponds to 10% of the price of the auctioned goods or of the first month's lease.
- Payment of the price and removal of the goods.
- In the event that the price is not paid in full, the Administration may declare the award null and void and claim damages and execute the performance bond. Likewise, a new awarding act shall be issued in favor of the second best bidder if it is still willing.
- Drawing up and signing of the contract detailing the rights and obligations of the parties.
- Registration in the National Registry in those cases where it is necessary.





## 2.2 Special Administrative Contracting Procedures

### 2.2.1 Bidding with Financing

This bidding modality is used by the Administration when it does not have the financial resources at the beginning of the bidding process and the bidders are the ones who must bring financing options, either financed by the awarded company or by a third party through the latter's management.

It is important that bidding with financing refers to a contracting procedure that foresees the existence of a credit on the part of the winning bidder to cover the value of the object of the future contract.

This mechanism is used by the Administration in exceptional cases to meet a specific need and whose expenditure could not be contemplated in the institution's budget.

The characteristics of this type of bidding are as follows:

- It is mandatory that the poster is published in the official newspaper La Gaceta.
- The invitation to participate is open so that a higher number of bids may be submitted.
- Guarantees of participation and performance are required.
- The announcement or bidding conditions may be challenged before the Comptroller General of the Republic.

It should be emphasized that this is the only case in which joint bids may be submitted without having to be authorized by the bidding cartel, there may be, on the one hand, the bid of the party financing and, on the other, the bid of the party performing the goods and/or services, each party assuming sole responsibility for the object it is bidding for.

### 2.2.2 Bidding with prequalification

This is a bidding process composed of two parts: a. prequalification stage and b. a stage for awarding the goods or services to be contracted. The bidder may be prequalified for a single tender or for several tenders.

The prequalification stage seeks to evaluate the bidders, mainly in terms of experience and qualified personnel. The winners of the first stage become part of a register of suitable bidders that are allowed to participate in subsequent tenders. In the second stage only the goods or services to be contracted are evaluated.

The Administration may prequalify bids as part of a public or abbreviated bidding process, depending on the amount. If the amount is inestimable or unknown at that time, it will be processed under the public bidding procedure.

The invitation will be made through the Integrated Public Procurement System (SICOP) without prejudice of optional publication in the Official Gazette "La Gaceta", or any other media of national circulation deemed appropriate.

Considering that, in a contracting under the prequalification modality, there may be several stages, it is possible to challenge the final act of each one of them. However, during the second stage for example it is possible to challenge through recourse aspects related to the decision of the first stage. The type of appeal will be determined according to the estimation of the business and when it is invaluable, difficult to determine or unknown at that time, it will be subject to appeal before the Office of the Comptroller General of the Republic.

The maximum term of validity of the prequalification will be up to four years.

### 2.2.3 Low Bidding Auction

The low bidding auction is established as part of the public bidding or abbreviated bidding. When the low bidding modality is selected, the participants will propose a base price in their offers to be improved in the price bidding. The bid that is the lowest and unmatched when the auction closes is the winning bid.

Generic products are the object of a low bidding auction, understood as supplies, equipment or goods of common use, whose manufacture follows standardized rules, such as nails, screws, stone, etc.

The auction is carried out through SICOP.

In this type of contracting, the following must be taken into consideration

- Preliminary stage: Prior to the start of the auction, a technical analysis of the bids will be made to select which bids may participate in the auction.
- The auction will remain open for several days until closing, which must be at a specify business day and time.
- The awarding act will be published through SICOP.
- The successful bidder must deposit as performance bond 10% of the amount awarded within the next business day, if the successful bidder does not submit the performance bond, the bid is declared void and the second best offer is selected.



### 2.2.4 Framework Agreement

The framework agreement is a bidding modality in which prices and purchase conditions for goods and services are fixed for a defined period of time.

Framework Agreements are carried out through a national public bidding process. The General Directorate of Property Management and Administrative Contracting is in charge of carrying out the public bidding process, and the Minister of Finance subscribes the Framework Agreements for goods, works and services.

In this way, the purchasers of each of the public institutions, after finding what they are looking for in the Electronic Catalog, only have to issue the purchase order to the supplier without further formalities. The public bidding is carried out through the platform SICOP.

### 3. PUBLIC PRIVATE PARTNERSHIP (PPP)

Public-private partnerships in Costa Rica refer directly to contracts between public and private organizations for the design, financing, construction, operation and maintenance of infrastructure projects and services of public interest, transferring part of the risks and responsibilities to the private sector.

Steps	
a) Identification of the problem and/or need.	The first step in forming a public-private partnership for development (PPPD) is to identify a problem, need or opportunity in accordance with the objectives contained in the National Development Plan, the sustainable development objectives defined by the United Nations, sectoral objectives or any other instrument that will allow the institution to have a positive impact on sustainable development processes at the local, regional or national level.
b) Mapping.	The mapping of potential stakeholders will be done by identifying those who are related to or have an interest in the identified problem or need that motivates the PPPD so that they can then be classified as potential partners or stakeholders.
Objective of the PPPD.	Prior to materializing the alliance, the parties involved will clearly express their initial vision on the causes, objectives, goals, deadlines and dynamics of the public interest pursued by the project, the reason for solving it and the possible solution mechanisms.

d) Resources	In order to clearly determine the activities to be carried out to achieve the agreed objectives, it is essential to identify the resources available to each of the parties involved in the PPPD, both from the public and private sectors. The identification should produce an inventory to determine potential financial, technical and material resources, and other strategic inputs such as human resources, contacts and spheres of influence, knowledge, information gathering and their capacity to disseminate it in relation to the establishment, operation and maintenance of the PPPD.
e) Structure	When structuring a PPPD, the conditions and participants must be clearly established by means of a pre-established protocol. The objectives and goals of the initiative, the resources and contributions made by the parties, the decision-making, evaluation and conflict resolution mechanisms, the duration of the alliance, among others, must be defined, and the parties must sign an agreement. Likewise, the PPPD 's will form, whenever possible, a technical committee with representatives from each of the organizations in order to develop, implement and evaluate the results of the initiative's work plan.
f) Execution.	The parties to the PPPD will establish a work plan, with the necessary procedures and execution schedule defining the following: deliverables, activities, responsible parties and deadlines; in order to contribute to the objectives of the partnership and strengthen the implementation of the PPPD. The partnership shall execute this work plan in accordance with the resources and timeframe established in the resource mapping or identification stage.
g) Accountability, transparency and communication.	The partnership should develop internal communication policies and stakeholder communication strategies that contribute to the transparency and accountability of the partnership. The partners shall develop an internal communication strategy that includes, at least, the channels and periodicity of communication.



### 3.1 Guide for the Creation of PPP Protocols

It should be noted that there is no digital platform of suppliers interested in registering companies that can execute or be part of a public-private partnership.

Each institution that makes up the Public Administration must establish a protocol that includes the necessary management tools, for which they can take as a reference the “Guide for the Creation of PPPD Protocols”, which includes the following points that must be included:

- Define strategic priority areas for the institution.
- Define criteria for the selection of partners.
- Identification of legal figures for the formalization of alliances.
- Make a diagnosis of the legal figures for formalization of alliances.
- Identify opportunities to improve existing procedures.
- Elaborate procedures.
- Develop orientation tools or spreadsheets.<sup>3</sup>

Etapas: Alcance					
Nombre: Fecha de proyecto					
Fecha:	Nombre de la alianza				
Fecha de inicio de ejecución de este documento	Nombre de la alianza para este proyecto				
Fecha de inicio de la alianza:	Fecha tentativa de finalización:				
Indicador de éxito	Fecha tentativa de inicio de ejecución de este documento y estimación de recursos y divisiones				
IDENTIFICACIÓN DEL EQUIPAMIENTO					
<ul style="list-style-type: none"> <li>• Acciones de la relación entre la institución y el socio externo</li> <li>• Identificar los recursos que mejor se ajustan a las necesidades y objetivos de la institución</li> <li>• Fortalezas de la institución de la organización</li> <li>• Experiencia en iniciativas similares</li> <li>• Indicar si el proveedor de la institución</li> <li>• Indicar si el proveedor de alguna otra institución gubernamental</li> </ul>					
JUSTIFICACIÓN					
<ul style="list-style-type: none"> <li>• Indicar cómo este apoyo externo responde a los objetivos del PPD y de las orientaciones estratégicas de la institución</li> <li>• Determinar las necesidades de la institución que serán cubiertas con el apoyo de este socio estratégico</li> <li>• De conformidad con la propuesta de convenio, determinar la pertinencia del socio estratégico para realizar esta alianza</li> </ul>					
PROPUESTA DE TRABAJO					
Objetivos	Actividades	Plazo de ejecución	Recursos (humanos y económicos)	Responsable	Población meta
PRESUPUESTO					
Presupuesto del Cooperante					
<ul style="list-style-type: none"> <li>• Presupuesto Estimado del Proyecto</li> <li>• Proyecto XX: \$ 00</li> <li>• Proyecto XX: \$ 00</li> <li>• Para un total en proyecto de: 000</li> </ul>					

### 3.2 Competence

The Ministry of Economy, Industry and Commerce (MEIC) is responsible for coordination through the Advisory Council of Social Responsibility, which will be in charge of coordination. The Ministry of Planning and National Policy will be responsible for monitoring the progress and results of the PPPD for the achievement of the Sustainable Development Goals (SDGs) and the National Development Plan (NDP).

Once the PPPD is constituted through the respective agreement, the technical directorate responsible for the assigned topic within each institution will be responsible for the execution of the respective agreement.

How to initiate a public-private partnership? In Costa Rica, any private legal entity may submit a partnership proposal to a public institution to carry out such collaboration with the public sector.

It should be noted that there are foundations that serve as mediators to facilitate and bring the parties together and accompany them in carrying out PPPs. In Costa Rica, for example, there is the Fundación para la Sostenibilidad y la Equidad, known as ALIARSE<sup>4</sup>.

## 4. PLATFORMS FOR ADMINISTRATIVE CONTRACTING

Public procurement in Costa Rica is developed on an electronic platform called the Integrated Public Procurement System (SICOP), which consists of an integrated public procurement system as a technological platform for use by the Central Administration for the processing of administrative contracting procedures, in accordance with the provisions of the regulations for the use of the integrated public procurement system “SICOP” N°41438-H.

Benefits of the integrated public procurement system

- Modernization of the public procurement model through the intensive use of state-of-the-art technology and adoption of international best practices.
- Greater transparency in contracting processes.
- Obtaining lower product prices by encouraging the participation of more companies, taking advantage of economies of scale. Savings for buyers are

3. (Link: image013.png (590x775) (pgrweb.go.cr))

4. The “ALIARSE” website is the following: <http://www.aliarse.org/en/>

estimated at 20%.

- Reduced processing time for the State and the private sector.
- Increased competitiveness of local companies and the State.
- Encouragement of a culture of change, allowing institutions to be more competitive.

In order to make public purchases it is required:

To be part of the supplier registry: SICOP's electronic supplier registry will be mandatory for user institutions and is the only suitable instrument in which individuals and legal entities wishing to participate in administrative contracting procedures processed through SICOP will be registered. Said registration will be valid for twenty-four months; however, if during this period any changes are made to the information registered by the supplier, the supplier must update the information in the Supplier Registration Module.

## 5. UPCOMING OPPORTUNITIES

The platform for viewing future opportunities will be visible on the aforementioned Costa Rican purchasing platform (SICOP) and the way to register and log in is described above. This should display the awarded and available tenders.

It should be noted that all public institutions are required to provide an annual procurement plan.

## 6. NEW COSTA RICAN ADMINISTRATIVE CONTRACTING GUIDE

The information included in this section is applicable to Costa Rica as of December 1, 2022, and will be applied in conjunction with its regulations, which will be promulgated upon its entry into force.

### 6.1 Regulatory framework

- Costa Rica's political constitution
- International Instruments
- General Law of Administrative Contracting, law number 9986.
- General Law of Public Administration, law number 6227.

- Regulations to the General Law of Public Administration (regulations to be drafted).

## 6.2 Administrative contracting regime

### 6.2.1 Ordinary Administrative contracting regime

#### I. Sale of goods and services

**Major tender:** For procurements with an estimate of more than ₡238,223,960 colones, which corresponds to approximately €315,946.90.

**Smaller tenders:** For procurements with estimates between ₡59,555,990 colones to ₡238,223,960 colones, corresponding to approximately €78,986.72 to €315,946.90.

**Reduced tender:** For procurements with an estimate of less than ₡59,555,990 colones up to approximately €78,986.72.

#### II. Public works

**Major tender:** For procurements with an estimate of more than ₡641,372,200 colones, which corresponds to approximately €850,626.26.

**Smaller tender:** For procurements with an estimate between ₡160,343,050 colones to ₡641,372,200 colones, corresponding to approximately €212,656.56 to €850,626.26.

**Reduced tender:** For procurements with an estimate of less than ₡160,343,050, which corresponds to approximately €212,656.56.

### 6.2.2. Differentiated regime

For national non-financial public enterprises such as the Instituto Costarricense de Electricidad (ICE) and Instituto Nacional de Seguros (INS).

#### I. Sale of goods and services

**Major tender:** For procurements with an estimate of more than ₡238,223,960 colones, which corresponds to approximately €315,946.90.

**Smaller tender:** For procurements with an estimate between ₡59,555,990 colones to ₡238,223,960 colones, corresponding to approximately €78,986.72 to €315,946.90.

**Reduced tender:** For procurements with an estimate of less than ₡71,467,188, which corresponds to approximately €114,164.84.

#### II. Public works

**Major tender:** For procurements with an estimate



of more than ₡1,026,195,520, which corresponds to approximately €1,361,002.02.

**Smaller tenders:** For procurements with an estimate between ₡256,548,880 colones to ₡1,026,195,520 colones, corresponding to approximately €340,250.50 to €1,361,002.01.

**Reduced tender:** For procurements with an estimate of less than ₡256,548,880, which corresponds to approximately €340,250.50.

The thresholds defining the procedure to be followed will be modified each year from 31 December.



## Types of administrative contracting

Ordinary Procedure			
Characteristics	Major tender	Smaller tender	Reduced tender
Publicity	Unified digital system	To be laid down in the regulation	To be laid down in the regulation
Possibility to object to the poster	Yes	No	No
Number of bidders to invite	Open	Pending to be established in the regulation	Pending to be established in the regulation
Number of offers to be analyzed	All offers received	Only bids from invited suppliers. Unless invited through La Gaceta.	All bids submitted by registered suppliers.
Deadline for submitting bids	Minimum 15 working days	Minimum 3 days maximum 15 working days.	Minimum 3 days maximum 15 working days.
Deadline for awarding	It cannot be more than twice the amount fixed for the receipt of bids.	It cannot be more than twice the amount fixed for the receipt of bids.	It may be extended for a period equal to that of receiving bids.
Appeals against the act of awarding the contract	Appeal	Appeal for revocation	Appeal for revocation.
Others appeals	Appeal of objection against the bidding documents	Appeal of objection against the bidding documents	It does not have

### Contract types and modalities

- Public works contract.
- Supply contract.
- Operating lease contract.
- Donation contract.
- Service contract.
- Public trust contract.

### New contracting modalities

- Supply contract: under the modality of delivery on demand and execution by consignment.
- Framework agreement: For public works and procurement of goods. When the object is standardized and can be quoted in unit prices.

### 6.3 Platform

New unified digital system, electronic registration of suppliers and subcontractors in the unified system is necessary.

It is not only a matter of making the information available in electronic platforms of public access, but

it is also necessary to guarantee the real possibility of consulting and using it as part of accountability. For this reason, the regulation establishes the obligation to contemplate consultation interfaces for the civil society that allow knowing essential aspects of the procedures. The regulation does not provide for specific formats but refers to the Ministry of Finance for best practices and international standards, incorporating the principles of publicity, transparency and technological neutrality of each of the procedures, documents and information related to public procurement.

The norm establishes the availability of the information in indexed form and under open formats that allow interoperability for its access and processing, so that at least it is stored in open digital formats and suitable for any interested party to download, copy and manipulate them.

### 6.4 Administrative contracting plan

In the first month of each budget period, the Administration must publish the projected procurement program in the unified digital system. The law empowers the Administration to send early alerts that constitute notices of the intention to initiate procurement procedures prior to the publication of the bidding documents, with the intention of informing suppliers or interested third parties.



## 6.5 Public- private partnerships (PPP)

The new Law regulates the participation of PPPs to allow the implementation of initiatives under coordinated and duly planned mechanisms. It should be noted that the law stipulates a governing body for PPPs, the National Public Procurement Council, which will be in charge of issuing the policies to develop the projects. In addition, the ordinary bidding procedure will be followed for this figure, and the term may not exceed fifty years from the beginning of the execution (this term also includes extensions).

The requirements for its application are as follows;

- To have a feasibility study of the project according to the components of the National Public Investment System and to be registered in the public investment project bank.
- Analysis on the convenience of carrying out the project through a public-private partnership scheme.
- Feasibility regarding real estate, assets, rights necessary for the development of the project.
- Any other requirement provided for in the legal system.

## 6.7 Accountability, integrity and transparency of public procurement systems

The law seeks to maximize transparency in each stage of the procurement cycle, promoting the use of the unified digital system and establishing clear procedures for accountability and control. The position of the European Union (EU), the Organization for Economic Cooperation and Development (OECD) and the importance they have given to this principle in the area of public procurement have been considered.

In direct relation to the principle of transparency, the principle of transversality is emphasized so that both principles are applicable to all contractual activity and to the entire public procurement cycle. On the other hand, an essential component is incorporated through the legal recognition of ethical values, which seeks to guide the conduct of all parties involved in public procurement.

The principle of transparency is associated with citizen participation, . For this reason the Law regulates a single procurement system of easy access, from which it is expected that both the Administration and those interested in participating in the different contracting procedures, and citizens in general, can access the

information contained therein and know first hand the terms of the contract, bidders, successful bidders and contract amounts, among much other.

## 6.8 Prohibitions

The regime based on the principle of transparency is accompanied by robust control mechanisms, such as a registry of sworn statements and the introduction of a specific criminal offense for the inclusion of false information in the statement or the participation in contracting procedures without updating the information contained therein.

In relation to the registry of sworn statements, the purpose is to make transparent the information that the different bidders include in the sworn statements included in the aforementioned registry. In this way, it is intended that any interested party may have access to the statements by entering a public access registry that must exist in the unified digital system.

One of the novel conditions included in the law is the obligation to submit the sworn statement, which will not make participation in the contracting procedures more onerous, since the statement is submitted only once and, if the information contained therein does not vary, the bid must simply indicate that there is no variation. Otherwise, in the event that the information must be updated, a new declaration must be filed in the system.

Any person interested in participating as a bidder or subcontractor in any public contracting procedure must submit a one-time sworn statement on the following aspects:

- That it is not subject to any of the prohibition grounds established by law,
- That, in the event of being subject to any of the prohibition cases, it complies with any of the disaffection cases.
- In the case of legal entities, they must indicate in the affidavit the nature and ownership of the shares.

If the sworn statement is untrue, such fact will give rise to the crime of perjury regulated in Article 318 of the Criminal Code.

With respect to the grounds for prohibition, although it is based on the grounds that are currently in the legal system, new cases are included, such as the prohibition for all public servants to participate in contracting procedures promoted by the contracting entity in which they provide services.



### 6.9 Reduction of exceptions to promote competition

In the previous legislation there are more than twenty different cases of exception, without distinguishing between cases involving competition and those involving a direct award without competition, what is commonly known as a “handpicked” award. In practice, the large number of exceptions has generated that, in the current scenario, most of the procurements are made through an exception procedure, with or without competition, and not through the ordinary bidding procedure, as established in the Political Constitution.

Therefore, due to the above, this law is the result of a process of purification of the exceptions to the ordinary contracting procedures, not only by significantly reducing the number of exceptions, in order to guarantee the existence of competition in most of the contracting procedures, but also by introducing and adjusting some of the requirements for their use.

### 6.10 Recursive regime

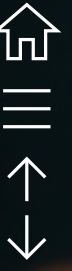
Regarding the appeals system, the law proposes an optimization to provide greater efficiency and legal certainty to operators. Although the types of appeals are maintained, challenges both with respect to the bidding terms and conditions and the final act before the Office of the Comptroller General will only proceed in the case of major bidding procedures. Whereas, in the case of minor bids, the knowledge of the challenges corresponds directly to the bidding entity.







# PUBLIC PROCUREMENT IN EL SALVADOR



## EL SALVADOR

## 1. REGULATORY FRAMEWORK

## 1.1 Laws and regulations

- Political Constitution
- Procurement and Contracting of the Public Administration Law No. 868.
- Regulation to the Procurement and Contracting of the Public Administration Law, Decree No.53.
- Public-Private Partnerships (PPP) Law No.379.
- Regulation to the Public-Private Partnerships (PPP) Law No. 379.

## 1.2 Administrative contracting of public construction and infrastructure.

For the construction of public works and infrastructure, bidding or tendering, free management or direct contracting will be used, depending on the amount of the contract and the Administration's budget.

## 1.3 Administrative contracting for the acquisition of assets and services.

For the procurement of supplies and services, bidding or tendering, free management or direct contracting will be used, depending on the amount of the contract and the budget of the contracting Administration.

## 2. PROCEDURES FOR ADMINISTRATIVE CONTRACTING

## 2.1 Ordinary Administrative Contracting Procedures

## 2.1.1 Bidding or Tendering

The Public Bidding is the procedure in which competition is promoted, publicly inviting all natural or legal persons interested in participating. The minimum amount for the application of this type of contracting will be greater than the equivalent of six hundred and thirty-five (635) urban minimum wages. The minimum amount for hiring of individual consultant in the process of public competition is greater than the equivalent of two hundred (200) urban minimum wages (€166,60 is the minimum wage established for the year 2021, so 635 minimum wages is equivalent to approximately €105.791,00, and 200 minimum wages is equivalent to approximately €33.320,00). The amount of the minimum wage may change annually depending on the decrees of the National Minimum Wage Council.

## 2.1.2 Bidding or Tendering by invitation

Bidding or tendering by invitation is the distinctive form

of contractor selection in which a short list of bidders is drawn up, with a minimum of four invitations to natural or legal persons, national or foreign, who are publicly invited to participate in order to ensure competitive prices. This list may be compiled based on the database maintained by the Procurement and Contracting Unit of the Salvadoran Social Security Institute (UACI). Only in duly justified special cases, the number of participants may be reduced to a minimum of two. The minimum amount for the application of this type of contracting will be for an amount equivalent to eighty (80) urban minimum wages up to six hundred thirty-five (635) urban minimum wages, (€166,60 is the minimum wage established for the year 2021, therefore 80 minimum wages is equivalent to approximately €13.328.00 and 635 minimum wages is equivalent to approximately €105,791.00).

Instead, the minimum amount for the hiring of individual consultant with the process of public tender by invitation will be equivalent of eighty (80) urban minimum wages up to two hundred (200) urban minimum wages (€166.60 is the minimum wage established for the year 2021, so 80 minimum wages equals approximately €13,328,00 and 200 minimum wages equals approximately €33.320,00).

## Procedure:

- **Pre-qualification:** this is the stage prior to a tender or a Tender in which UACI makes a pre-selection among the qualified bidders and directly invites them to submit bids.
- **Co-qualification:** Co-qualification shall be understood as the stage of a tender or competition in which UACI directly invites bidders to submit bids without having previously qualified them, which it will carry out simultaneously when analyzing and evaluating bids.
- **Reasoned Agreement to Qualify:** Qualification will generally proceed when dealing with the procurement or contracting of works or goods of great magnitude or complexity, or services that require highly specialized knowledge, such as: hydroelectric works, geothermal works, highways, airports, ports, communication services of great technological advancement, specialized studies such as ecological and others. In order to use the pre-qualification or co-qualification mechanism, the contracting institution must issue a reasoned agreement. The qualification mechanism must be stated in the tender or competition conditions.



### 2.1.3 Free management

It is that simplified procedure by means of which the institutions select the contractor that will provide them with works, goods, services or consultancies, it maybe used in the case of individual and collective consultants up to the amount of eighty (80) urban minimum wages (€166,60 is the minimum wage established for the year 2021, therefore 80 minimum wages is equivalent to approximately €13.328,00),. This requirement will not be necessary when the acquisition or contracting does not exceed the equivalent of ten 10 urban minimum wages; and when it is a single bidder or specific brands, in which only one bidder will suffice, for which a reasoned resolution must be issued.

## 2.2 Special administrative contracting procedures

### 2.2.1 Direct contracting

According to the regulations of the law, direct contracting is an extraordinary public procurement procedure. This procedure requires reasoned decision from the head of the Institution, Board of Directors, Board of Directors or Municipal Council, justifying the corresponding grounds that enable this type of

contracting, listing the factual situations and the legal or technical reasons that support it.

In the case of direct contracting due to the declaration of a state of emergency, the requesting Unit shall present the justification for the requirement and subsequently the Head of the UACI or the person designated by him/her shall verify that the requested procurement is linked to the cause that motivates it, i.e. that the acquisition of works, goods or services are directly related to those arising from the same, or that they serve to prevent the situation from worsening. Procurement procedures that have been initiated before the declaration of the state of emergency shall continue to be governed by the legal stipulations by which they were initiated, until their conclusion, unless for reasons of general interest, the incumbent decides to cancel them and proceed to direct contracting.



Characteristics	Bidding or tendering	Free management	Direct Contracting
Advertising	The invitation to participate, modification to the bidding documents and the award ceremony will be published in a national newspaper the and in CompraSal.	CompraSal.	CompraSal.
Possibility to object to the poster	No. Questions or clarifications may be submitted within the time limit set by the Poster, without these modifying the rules of the competition.	No	No
Total of bidders to invite	To all those interested in offering	If competition is generated, at least three suppliers must be invited.	Minimum of 3 potential suitable Bidders.
Number of bids analyzed	All the bids received	All bids submitted by registered suppliers.	All bids submitted by registered suppliers.
Deadline for submitting bids	The law does not set a time limit, each tender poster must indicate the time limit for receiving bids.	The law does not set a time limit, each tender poster must indicate the time limit for receiving bids.	The law does not set a time limit, each tender poster must indicate the time limit for receiving bids.
Deadline to award	The award term cannot be more than 60 days after the public tender opening; however, each entity may exceptionally extend it for 30 more days.	It cannot be more than twice the amount fixed for the receipt of bids.	It cannot be more than twice the amount fixed for the receipt of bids.
Appeals against the act of awarding the contract	Appeals for revision of awards must be filed within 5 business days after the notice	Appeals for revision of awards must be filed within 5 business days after the notice	Appeals for revision of awards must be filed within 5 business days after the notice

### 3. PUBLIC-PRIVATE PARTNERSHIP (PPP)

El Salvador has a regulatory framework for the development of public-private partnerships (PPP) projects for the provision of infrastructure and public services of general interest. PPPs are regulated by Law No. 379, and its Regulations.

PPP projects may be carried out by the Executive Branch, autonomous institutions (including the Hydroelectric Executive Commission) and municipalities, the latter acting as contractors.

#### Types of PPP contracts

- Partnerships in which the contracting State institution provides the private participant with goods or material works in the public domain.
- Partnerships in which the private participant allocates its own assets to provide a public service by means of a public service concession.
- Partnerships involving the exploitation or execution of an activity of general interest.

It has the following characteristics:

- The amount of investment and updated operation and maintenance expense of such projects shall exceed the equivalent of forty-five thousand times (45000) the current monthly minimum wage of the trade and services sector. (The amount of the minimum wage established for the year 2021 is €166,60 euros).
- Excluded from the scope of this Law are projects in the sectors of health, social security, including the Salvadoran Institute of Social Security (ISSS), public security, justice in terms of custody, rehabilitation and prison work of inmates, water, education, and even the University of El Salvador.
- 40 years is the maximum period for a PPP contract.

The advisory and governing authority to carry out these PPP processes is PROESA, whose initials stand for Organismo Promotor de Exportaciones e Inversiones de El Salvador (Export and Investment Promotion Agency of El Salvador), all PROESAS services are free. In order to access the bids of these PPP projects, there is a web page where the projects in portfolio and under evaluation are published<sup>5</sup>.

There is also a Public-Private Partnership oversight body (OFAPP), as a public law institution, which will be responsible for the technical oversight of PPPs and to also promotes the exercise of users' rights.

5. Link: <https://www.proesa.gob.sv>

Private initiative will be accepted only in relation to projects:

- a. That due to their economic nature have been qualified as self-sustainable by the state contracting institution and the board of directors of PROESA.
- b. That do not correspond to a work that, at the time of the presentation of the private initiative project, is being studied by PROESA or any state contracting institution, to be executed by means of a public-private partnership. To this effect, PROESA and the other mentioned institutions shall maintain a public list of the projects under study to be submitted to such modality.
- c. Incorporate innovative practices in the economic sector to which the project corresponds and with respect to traditional public provision. Legal entities and all kinds of associations between them, whether national or foreign, may submit a private initiative project.

Stages of the PPP bidding process:

- **Prequalification of Bidders:** The bidding procedure may have an initial prequalification stage in which national and international bidders may participate, in order to select those with the experience and financial capacity specific and relevant to the project. For this stage of the procedure, a bidding document will be prepared defining the prequalification requirements. During prequalification, equal treatment among bidders will be guaranteed and no arbitrary or unjustified differentiation will be made. The prequalification specifications will allow the prequalified bidders to propose to the state contracting institution the improvements, additions or adjustments they deem convenient to make to the draft bidding conditions and the contract, especially to its service levels and technical standards, at the request of the state contracting institution and through sessions that may be attended by all the prequalified bidders. The state contracting institution will have a maximum period of sixty days to decide regarding said prefeasibility study. If the state contracting institution does not consider the project to be of interest, it will notify the bidder in writing; if the state contracting institution considers it to be of interest, it will request an opinion from PROESA's Board of Directors.

- **Feasibility Stage:** The declarations of interest will be published once only in two newspapers of national circulation, as well as in the institutional portal of the State contracting institution and that of PROESA, so that third parties, within a maximum period of sixty



days, may express their interest in the execution of an alternative project involving any of the State assets identified in the original proposal. PROESA and the contracting institution of the State shall be empowered to carry out the promotional activities they deem convenient, and which in their opinion encourage the concurrence of third parties interested in the execution of an alternative project, the proponent of the private initiative must present the feasibility studies within a period of one year.

- **Bidding Terms and Conditions:** The State contracting institution, in conjunction with PROESA, will prepare the bidding conditions, which must be approved by PROESA'S board of directors. These must contain at least a general description and objectives of the project, conditions for the presentation of the bid, a precise description of the results of the contract, criteria to be applied by the evaluation committee to evaluate the technical proposal, contract term, bid maintenance guarantee requirement, requirements and formalities of the affidavits and draft contract.

- **Contract:** Public-Private Partnership contracts shall be executed in a public deed and entered between the State institution through its owner and the company. If this term elapses and the contract is not signed due to the responsibility of the successful bidder, the State contracting institution shall annul the awarding of the contract, making the bid maintenance guarantee effective and may award the contract to the next best bid or, if there is none, call for a new public tender under the terms regulated in this Law within the term established in the bidding conditions.

- **Evaluation:** the technical and financial bids will be evaluated by an evaluation committee, which will consider objective, quantifiable and easily comparable award factors between the different economic-financial proposals of the bidders (the factors will be contained in the terms and conditions).

- **Award:** If there is no technical proposal that meets these conditions, the commission will recommend that the tender be declared void. If there are one or more valid technical proposals, the commission will proceed to evaluate the economic proposals of the respective bidders. The state contracting institution shall approve or reject the recommendation of the evaluation commission within a maximum period of five (5) days.

- **Appeal:** an application for review of the award decision may be lodged within five days of the date of notification. Admission of the appeal must be decided within a period not exceeding three days from the date of its lodging. Once the appeal has been admitted, it

shall be resolved by the head of the State contracting institution within a period not exceeding twenty days. The head of the State contracting institution may be assisted by specialists to analyze the arguments put forward in the appeal. The substantiated decision must be notified to the appellant within a period of no more than two days after it has been issued. The validity of the guarantees of challenge shall be established in the bidding conditions and in all cases shall be greater than thirty days from the filing of the appeal for review. The resolution of the appeal for review will exhaust administrative channels.

- **Special Purpose Company:** The bidder to whom the contract has been awarded, shall be obliged to incorporate a corporation, of Salvadoran nationality, whose purpose is to develop all activities related to the Public-Private Partnership contract. The capital of this company shall always be constituted by nominative shares and shall comply with the other requirements of the mercantile laws of El Salvador. No public institution may form part of the shareholders of this company, either directly or indirectly. The incorporation of the company shall be with the same partners, shareholders or members of the consortium and in the same proportions that they maintained on the date of award.

#### 4. PLATFORM FOR ADMINISTRATIVE CONTRACTING

El Salvador's administrative procurement platform is to CompraSal, which is established by law as the official means through which Institutional Procurement and Contracting Units are published so that registered suppliers can bid and take part in different tender processes.

In order to register as a foreign supplier, the supplier shall follow the next steps

- ID: The supplier must have in its own name or in the name of a company a NIT (Número de Identificación Tributaria which means Tax Identification Number). In case the supplier is a foreigner who does not have a NIT, he/she must fill it with his/her passport.

- Complete the general data of the supplier's account: fill the information that will be presented (supplier's name, gender, commercial name, email, telephone, address, department, municipality, company classification, website and description of works, goods and services).



- Contacts: optional step where the supplier can link contacts to the supplier's account, which will have an username and password.
- Files: The following scanned files must be uploaded, in PDF format, which must be legible and current:

#### Foreign person with NIT (Tax Identification Number),

- Passport
- Tax identification card NIT.

#### Foreign person without a NIT (Tax Identification Number):

- Passport

#### Foreign legal entity:(must be in Spanish or translated and certified by a Notary Public)

- Credentials of the legal representative
- Identity document of the legal representative
- Tax identification number of the legal representative. (NIT)
- Tax identification number of the legal entity. (NIT)
- Public deed of incorporation of the company or a deed containing the company's current articles of association.
- Commercial registration.

- Finish registration: The password and user to log in will be given to the supplier at the e-mail address indicated in the general data.

Companies that register as suppliers must validate the information in the offices of the UNAC, a copy certified by a notary public of all documentation must be delivered to the UNAC for validation purposes.

Once the registration steps have been completed, the supplier will be able to search for free management and tendering opportunities on the platform for open tenders that can be filtered by date or by institution. The supplier can then submit his/her bids in the current processes<sup>6</sup>.

## 5. UPCOMING OPPORTUNITIES.

### Annual Procurement Program

The platform for viewing future opportunities will be visible on the aforementioned El Salvador purchasing platform (Comprasal) and the way to register and log in is described above. This should display the awarded and available tenders.

The Ministry of Finance is responsible for proposing to the Council of Ministers the approval of the annual policy of Procurement and Contracting of the Public

Administration. For this purpose, there is a Regulatory Unit of Procurement and Contracting of the Administration (UNAC), which is attached to the Ministry of Finance and is responsible for issuing policies, guidelines, manuals, instructions, training, advice and support in all matters related to procurement.

Each public administration institution will establish an Institutional Procurement and Contracting Unit (UACI), responsible for operational decentralization and for carrying out all activities related to the management of procurement and contracting of works, goods and services. This unit will be organized according to the needs and characteristics of each entity and institution and will report directly to the corresponding institution the Ministry of Finance.

All public institutions shall make their annual programming of procurement and contracting of goods, construction of works and contracting of non-personal services, in accordance with their work plan and their Institutional Budget, which shall be public.

The PAAC (Annual Programming of Acquisitions and Contracting) can be found in the digital system of published purchases (comprasal) at the following link<sup>7</sup>.

## 6. ACCOUNTABILITY, INTEGRITY AND TRANSPARENCY OF PUBLIC PROCUREMENT SYSTEMS.

According to the law, the procurement and contracting processes of the public administration shall be governed by principles and values such as non-discrimination, publicity, free competition, equality, ethics, transparency, impartiality, probity, regulatory centralization and operational decentralization.

All current processes for tenders, direct contracting or free management can be consulted publicly and free of charge in the electronic public procurement system<sup>8</sup>.

The UACI will keep a record of all procurements made in the last ten years, for evaluation and control by the competent bodies and authorities. The UACI is part of the structure of the National Registration Centre, and therefore responds to audits by this center. It should be noted that the superior entity will be the Ministry of Finance.

The supplier can consult the historical register of suppliers of legal and natural persons registered in Comprasal at the link below<sup>9</sup>.

6. Registration guide link: [comprasal.gob.sv](https://comprasal.gob.sv)

Registration link: [https://www.comprasal.gob.sv/comprasal\\_web](https://www.comprasal.gob.sv/comprasal_web)

Video registration in supplier registry step by step link : <https://www.youtube.com/watch?v=q1rLK8s4BkQ>

7. Link: [https://www.comprasal.gob.sv/comprasal\\_web/resultados](https://www.comprasal.gob.sv/comprasal_web/resultados)

8. Link: [https://www.mh.gob.sv/pmh/es/Temas/Ley\\_de\\_Aceso\\_a\\_la\\_Informacion\\_Publica/Marco\\_Presupuestario/Registro\\_de\\_ofertantes\\_y\\_contratistas.html](https://www.mh.gob.sv/pmh/es/Temas/Ley_de_Aceso_a_la_Informacion_Publica/Marco_Presupuestario/Registro_de_ofertantes_y_contratistas.html)

9. Link: [https://www.comprasal.gob.sv/comprasal\\_web/paac](https://www.comprasal.gob.sv/comprasal_web/paac)





# PUBLIC PROCUREMENT IN GUATEMALA



## GUATEMALA

### 1. REGULATORY FRAMEWORK

#### 1.1. Laws and regulations

- Political Constitution
- Law of State Contracts, Decree #57-92 (hereinafter the "Law")
- Law of Public Order, Decree #7
- Organic Law of Budget, Decree #101-97
- Law of Alliances for the Development of Economic Infrastructure, Decree #16-2010
- Organic Law of the Comptroller General of Accounts, Decree #31-2002
- Code of Commerce, Decree #2-70
- Law for the simplification of administrative requirements and formalities, Decree 5-2021.

#### Regulations:

- Regulation to the Law of State Contracts, Government Agreement #122-2016 (hereinafter the "Regulation").
- Regulation to the Law of Alliances for the Development of Economic Infrastructure, Government Agreement # 360-2011

#### Ministerial Agreements:

- Prequalification Registration Requirements and Methodology before the General Registry of State Acquisitions, Ministerial Agreement # 563-2018
- Law Amendment/Bills:
- Preliminary aspects: explanation of the Bill#5703, Decree #4-2021 to the Amendment to the Law of State Contracts" (hereinafter the "Amendment #5703 to the Law").

### 2. PROCEDURES FOR ADMINISTRATIVE CONTRACTING

#### 2.1 Types of bids

##### 2.1.1 Public bids

When the total amount of goods, supplies, and works exceeds the amounts established for the cost estimate (Art. 38 of the Law), the purchase or contracting shall be done by public bid, with several exceptions.

The cost estimation process consists of searching through public tenders in GUATECOMPRAS for offers

provided by legally established vendors that sell or contract the goods, supplies, works, or services required. When the price of goods, works, supplies or services exceeds ninety thousand Quetzales (Q.90.000,00, approximately €9.500,00) (this threshold increases in Amendment #5703 to the Law to Q.200.000,00, approximately €21.250,00).

##### 2.1.2 Open contract purchase:

The open contract purchase is a procurement modality coordinated by the Ministry of Public Finance, through the General Office of State Procurement, to select vendors of goods, supplies, and services provided generally, constantly, or on demand. The different items included in public tenders must be previously qualified and awarded based on the request of two or more institutions mentioned in Article 1 of the Law, except for the Ministry of Public Health and Social Assistance, the Ministry of Education, the Ministry of Governance, and the Guatemalan Institute of Social Security, which may perform this process individually.

##### 2.1.3 Reverse electronic auction:

The reverse electronic auction is a public procurement modality used to contract public works, contract constructions, and standardized and approved goods and services, in a dynamic way, through GUATECOMPRAS. Authorized bidders make their offers in a public, electronic and real-time fashion during a set time and based on a reference price publicly known, which will be used as a starting ceiling amount for the process.

##### 2.1.4 Low-value purchase:

The low-value purchase consists of the direct procurement of goods, supplies, works, and services, excepted from the competitive process requirements of the other public procurement modalities of the Law when the procurement is for a maximum of twenty-five thousand Quetzales (Q.25.000,00, approximately €2.650,00). The above amount will be modified with the entry into force of Amendment #5703 to the Law, increasing to Q. 100.000,00, approximately €10.600,00. The publication of this type of contract may be performed in coordination with other official state systems, where the system may create any necessary connections to avoid duplicating information.

##### 2.1.5 Direct purchase:

The direct purchase modality consists of the procurement of goods, supplies, works, and services through an electronic offer in GUATECOMPRAS, omitting the bidding and quotation processes, when the procurement is higher than twenty-five thousand Quetzales (Q.25.000,00, approximately €2.600,00) but lower than ninety thousand Quetzales (Q.90.000,00,





approximately €9.500,00). The above amounts will be modified with the entry into force of Amendment #5703 to the Law, increasing to Q. 100.000,00, approximately €10.600,00, and Q. 200.000,00, approximately €21,260.00, respectively.

### 2.1.6 Sole vendor procurement:

The sole vendor procurement consists of purchasing goods, services, products, or items from a single vendor due to their nature and conditions.

### 2.1.7 Leases:

Leases of movable property or equipment will be subject to the contracting modality corresponding to the amount to be contracted. To set the amount determined by the contracting modality, the annual lease amount or the total lease amount (if the term is less) will be used as a reference. Leases of immovable property may be made if the interested body, dependency, or entity has no leases, insufficient leases, or leases in inappropriate conditions.

**2.1.8 Omission of Written Contract:** When dealing with merchandise, works, goods or services that are procured in the local market or immediate delivery, the signing of a written contract may be omitted, as long as the negotiation amount is not higher than one hundred thousand Quetzales (Q.100.000,00), and recording all the details of the negotiation in a minute or document, adding this evidence of the case to the corresponding file (Art. 50 of the Law). The above amount will be modified with the entry into force of Amendment #5703 to the Law, increasing to Q. 200,000.00, approximately €21.260,00)



Characteris-tics	Public bids	Direct purchase	Low value purchase	Sole vendor procurement
Advertising	Official newspaper and in GUATECOMPRAS There must be a period of no more than five (5) calendar days between both publications.	GUATECOMPRAS	GUATECOMPRAS	GUATECOMPRAS, official newspaper and a national newspaper.
Possibility to object to the poster	The contracting entity during a bid and before the presentation of offers may modify the bid bases. Interested parties will have no less than eight business days from the publication of bid bases modifications to submit their offers	It is not regulated.	It is not regulated.	It is not regulated.
Total of bidders to invite	To all those interested in offering	It is not regulated.	It is not regulated.	One.
Number of bids analyzed	All the bids received	It is not regulated.	It is not regulated.	One.
Deadline for submitting bids	Minimum of 40 days.	One business day from the publication of the contest in GUATECOM-PRAS	It is not regulated.	Five business day from the publication of the contest.
Deadline to award	The term of bid awards shall be the one indicated in the bid bases.	It is not regulated.	It is not regulated.	It is not regulated.
Appeals against the act of awarding the contract	Nonconformity Procedure must be filed within five calendar days.	Nonconformity Procedure must be filed within five calendar days.	Nonconformity Procedure must be filed within five calendar days.	Nonconformity Procedure must be filed within five calendar days.

## 2.2 Terms

### 2.2.1 General terms

### 2.2.2 Public Quotation System

There must be a minimum period of eight (8) business days between the publication of calls and bases in GUATECOMPRAS and the date of submission and reception of offers. This term will be reduced to five (5) working days with the entry into force of Amendment #5703 to the Law.

During the quotation process and the submission of offers, the contracting entity may modify the quotations' bases by publishing the modifications in GUATECOMPRAS. Interested parties will have no less than eight (8) business days from the publication of the modification to submit their offers."

The term to submit offers shall be stipulated in the quotation.

### 2.2.3 Open contract

The lists of goods and services awarded by open contracts will be published in GUATECOMPRAS within ten (10) days from the date of approval of such contracts.

The contracts will be signed within ten (10) days from the definite award.

### 2.3.4 Reverse electronic auction

The contracting entity shall make the call for reverse electronic auctions in GUATECOMPRAS within a period no less than eight (8) days before starting the process.

## 3. PUBLIC PRIVATE PARTNERSHIPS (PPP)

According to article 45 of the Law of Alliances for the Development of Economic Infrastructure, Decree #16-2010, tenders regarding alliance projects for the development of economic infrastructure will have an international public character and shall be posted as an international public invitation, as follows:

- Twice within a period of thirty days in the Official Gazette and twice in a newspaper or journal of national circulation;
- Twice in an international publication specialized in public procurement within a period of thirty days; and,
- On the contracting entity's website and in GUATECOMPRAS on the same day of approval of

the bidding conditions.

- The Law of Alliances for the Development of Economic Infrastructure, Decree #16-2010, establishes a term of at least 60 calendar days between the last publication (local or international) of the bid and the date of bid reception for bids regarding alliance projects for the development of economic infrastructure in Guatemala.

## 4. PLATFORMS FOR ADMINISTRATIVE CONTRACTING

To be a provider of the State of Guatemala and be able to make offers in the contests published in GUATECOMPRAS, providers must be registered before the General Registry of State Procurement (RGAE from Spanish). Its electronic platform<sup>10</sup> is available for individuals and corporations, local or foreign, that wish to become providers of the State.

Foreign vendors may participate in any procurement modality established by the Law using a provisional registration in the RGAE. In any case, it is essential to validate the final registration in the Registry before the awarding. However, when registering in the RGAE, the platform requests by default the Guatemalan Tax Identification Number (NIT).

Requirements and Methodology before the General Registry of State Acquisitions, Ministerial Agreement # 563-2018, provides that foreign companies that wish to obtain their registration and prequalification before the RGAE must complete and file the corresponding electronic form and the supporting documents. If during the registration process, the foreign company wishes to participate in an ongoing bid, they can file for a temporary registration, for which the following documentation is required:

- Proof of proper registration of the legal representative of the company in the respective registries;
- Legalized copy of the passport of the legal representative in case of being a foreigner;

<sup>10</sup>[www.rgae.gob.gt](http://www.rgae.gob.gt)



- Sworn affidavit in notarial public deed of the legal representative of the company declaring the country of origin where he is legally constituted and renouncing to any diplomatic intervention or claim in their favor and that they may not invoke immigration rights, legalized by a Guatemalan notary public;
- Balance sheet or statement of financial situation of the last fiscal period, presented before the tax authority of the country of origin, duly audited, expressed in quetzals at the exchange rate at the time of certification;
- Contracts, settlements or documents that certify the experience in accordance with the works, goods, supplies or services provided which have direct relationship with the specialties for which prequalification is requested; and
- Sworn affidavit stating that the prohibitions referred to in article 80 of the Law of State Contracts, Decree #57-92, do not apply.
- Additionally, for a definitive registration of foreign companies before the RGAE, a legalized copy of the following apostilled documentation will be requested:
  - Commercial trade patent;
  - Entity trade patent;
  - Certified copy of the incorporation public deed of a Guatemalan branch, and any amendments, registered in the Mercantile Registry, having to prove that it obtained the authorization to operate in Guatemala referred to in Chapter IX of Book I of the Guatemalan Commercial Code; or the special authorization to operate temporarily in Guatemala, provided in article 221 of the Commercial Code. This special authorization applies for foreign companies that wish to operate in the Guatemala for a period no longer than two years. This special authorization requires providing a bond in favor of the Republic of Guatemala that will not be less than USD\$50.000,00 and the appointment of a legal representative in Guatemala;
- Certification issued by the company stating the names of the members of the administrative body; and
- Fiscal solvency in which it is established that the company is current on its tax obligations in Guatemala, issued within a period no longer than 30 days prior to the date of submission.

## 5. UPCOMING OPPORTUNITIES

The platform for viewing future opportunities will be visible on the Guatemala purchasing platform (Guatecompras<sup>11</sup>) and the way to register and log in is described above. This should display the awarded and available tenders.

### Plan for future administrative contracts

By law, the bodies or entities of the State and its dependencies must prepare a Negotiations Schedule prior to the start of the fiscal year, and it must contain a list of the goods, works and services that it plans to acquire in the following fiscal year to meet the institution's objectives and results through the resolution of the higher authority (article 3 of the Law). This Negotiations Schedule may be consulted freely in the section called "Plan Anual de Compras" on GUATECOMPRAS' site, at the address<sup>12</sup>.

## 6. ACCOUNTABILITY, INTEGRITY AND TRANSPARENCY OF PUBLIC PROCUREMENT SYSTEMS

The information contained in the GUATECOMPRAS system is completely free, unrestricted and public. Any person may inquire any open contests, databases for bids and contracts, claims filed, offers presented, information on the award process, etc. Even information on providers that were disabled because of sanctions is available to the public.

The Comptroller General of Accounts (Contraloría General de Cuentas) is the entity in charge of supervising and exercising external governmental control over all state entities, by examining financial-administrative operations and transactions through the practice of audits with a comprehensive approach.

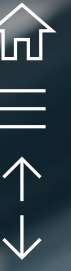
11. <https://guatecompras.gt/>

12. <https://www.guatecompras.gt/compradores/ConsultaPAC.aspx>





# PUBLIC PROCUREMENT IN HONDURAS



## HONDURAS

### 1. REGULATORY FRAMEWORK

#### 1.1. Laws and Regulations

- Political Constitution
- State Contracting Law
- Regulations to the Government Procurement Law
- Law on Efficient and Transparent Procurement through Electronic Means
- Regulations to the Law on Efficient and Transparent Procurement through Electronic Means
- Administrative Procedure Law
- General Law on Public Administration
- Law of Transparency and Access to Public Information
- Regulation to the Law of Transparency and Access to Public Information
- Law to Optimize Public Administration, Improve Citizen Services and Strengthen

### 2. PROCEDURES FOR ADMINISTRATIVE CONTRACTING

#### 2.1. Types of bids

The contractor selection procedures recognized in the Honduran constitution are as follows:

##### 2.1.1 Bidding:

This is the contractor selection procedure to which the Administration must necessarily submit when it intends to establish, on the basis of a prior justification of moral, technical and financial suitability, and who offers the most convenient price. All those contracts for the conclusion of which it is important to determine the most convenient price awarded. The following shall be awarded by means of bidding: public works and supply contracts, contracts for the purchase and sale of real estate, and leasing of real estate.

##### 2.1.1.1 Public bidding:

The law establishes that the amount of the contract will determine when it will be public bidding. Article 38, last paragraph, establishes that "in the General Provisions of the General Budget of Income and Expenditures of the Republic, the amounts required to apply the aforementioned contracting modalities shall be determined, according to the studies carried out by the Regulatory Office, pursuant to Article 31 paragraph

7 of this Law, always considering the inflation index and the annual evaluation rate determined by the Central Bank of Honduras. From the provisions of this article it is deduced that the amount that will determine when the public bidding will be due must be fixed annually, because the General Budget Provisions are valid for a limited period of one year. The Regulatory Office, then, will have the obligation to prepare its studies each year, considering the official inflation index and the annual devaluation rate determined by the Central Bank, for the purpose of updating the amount to be included in the General Budget Provisions. The public bidding is characterized by the fact that the number of participants may be unlimited, therefore it is foreseen that the invitation to submit bids must be published in official and commercial newspapers. There may also be international public bidding when special techniques are required or when there are other reasons that justify the participation of foreign contractors.

##### 2.1.1.2 Private bidding:

This type of bidding is characterized by the fact that the number of participants is limited, reduced, or restricted. This means that only those expressly invited by the administrative body are admitted as bidders. Private bidding shall be applied in the following cases:

- When the amount of the contract does not exceed the amount determined in the General Budget Provisions. In this case, the body responsible for the contracting shall invite at least three potential bidders registered in the corresponding Register to participate.
- When, in view of the purpose of the contract, there is a limited number of qualified suppliers or contractors, no more than three, which must be fully evidenced in the file.
- When, due to unforeseen circumstances or other duly qualified reasons of urgent urgency, a need arises whose attention could not be planned in advance, requiring prompt and effective action so as not to hinder the rendering of the service, and for this reason a public bidding is not possible.
- When, in order to maintain the security of the facilities intended for the rendering of the service, it is not convenient to make a public bidding process.
- In the case of supply, when due to unforeseeable changes in market conditions, duly verified, a shortage of products of essential use has occurred, the acquisition of which is necessary in the shortest possible time. When a public bidding is void or unsuccessful for reasons not attributable to the officials responsible for the procedure, provided that for duly qualified reasons of urgency it is not possible to repeat such procedure.



### 2.1.2 Tendering:

Consulting contracts shall be awarded through tendering, in accordance with the modalities of public or private invitation, according to the amounts established in the General Provisions of the General Budget of Revenues and Expenditures of the Republic, as determined in Article 38 of the Law. The procedure shall be subject to the following rules:

subject to the following rules:

- The Administration shall prepare the terms of reference, including the precise description of the work to be performed, the general and special conditions of the contract, the factors to qualify the bids, the term for their submission and the other conditions and requirements established by regulation;
- The terms of reference may also determine the prequalification of interested parties, in which case a list of three (3) to six (6) shall be prepared, who shall be invited to submit bids;
- The result of the evaluation of the technical proposals, with or without consideration of costs, as provided in the terms of reference, shall decide its order of merit; the result of the evaluation shall be communicated to the participants within the term established for such purpose; and, the best qualified bidder shall be invited to negotiate the contract. If there is no agreement, the second-best qualified bidder shall be invited to negotiate and so on, until a satisfactory result is obtained, without prejudice to declaring the procedure unsuccessful. The evaluation of the technical proposals will be made considering the following factors:
  - Experience in the specialty of the work in question,
  - Previous experience in the performance of previous contracts,
  - The appropriateness of the proposed work plan and approach in relation to the terms of reference,
  - The capability, suitability, and appropriate availability of the proposed personnel,
  - The financial capacity of the bidder in the case of construction supervision or other contracts in which it is required.

#### 2.1.2.1 Public tendering:

If the bidding is public, a notice shall be published in which the institution responsible for contracting shall publish the invitation for two (2) consecutive or alternate working days in one or more newspapers of national

circulation. The last publication shall be made at least 15 calendar days prior to the deadline for submission of bids; this period and the frequency of the notices may be extended considering the complexity of the works or supplies or other circumstances specific to each bidding process. The purpose of the notice shall be to invite potential interested parties to submit their proposals or, if prequalification is required, to submit their background information.

#### 2.1.2.2. Private Tendering:

The invitation to bid shall be private or public, depending on the estimated amount of the contract. If the tendering is private, the invitation shall be addressed directly to at least three (3) interested parties.

#### 2.1.3 Auction:

When assets assigned to any agency are determined that, no longer in use, cannot be efficiently used by another agency, they shall be considered as surplus property and shall be sold at public auction by the Secretary of State in the Office of Finance, through the Office of Administration of National Assets of the General Accounting Office of the Republic. In case there are no bidders at the auction, the assets may be donated preferably to Public Institutions.

#### 2.1.4 Direct contracting:

Is an exceptional procedure by means of which the State and its entities may contract directly, in the cases expressly provided for by law, the provision of a service, the acquisition or sale of a good or the execution of a work, without submitting to bidding or competition. The Honduran Constitution allows the State and its entities to dispense bidding procedures in two specific cases: a) in the awarding of contracts whose purpose is to attend the needs caused by a state of emergency, and b) in those which by their nature cannot be executed except with a specific person these are called direct contracting

The prior authorization of the competent body is an indispensable requirement. Direct contracting proceeds in the following cases:

- When its purpose is to provide for the needs caused by an emergency.
- When it is for the acquisition of spare parts or other specialized goods or services whose manufacture or sale is exclusive to those who have a patent or registered trademark, if there is no suitable substitute.
- In the case of works, supplies or consulting services, the value of which does not exceed the amounts established in the General Budget Provisions, in



which case quotations may be requested from potential bidders without the formalities of private bidding.

- When circumstances require that Government operations be kept secret.
- When it concerns the minting of currency and the printing of paper money.
- When dealing with specialized scientific, technical or artistic works.
- When a study or design has been programmed in stages, the design or supervision of the remaining stages may be contracted with the same consultant who has satisfactorily completed the previous stages.

## 2.2 Terms

### 2.2.1 Submitting bids:

The institution responsible for contracting will publish a notice for two (2) consecutive or alternate business days in one or more national newspapers, and may also use other means of communication, including telematic means. The last publication will be made, at least, 15 calendar days before the deadline of submitting bids. In other words, the period between the invitation and the date of submitting bids will not be less than 15 calendar days. This period and the frequency of the notices may be extended considering the complexity of the works or supplies or other circumstances specific to each bid, as assessed by the institution responsible for contracting. In the case of public works, there must be a period of no less than 30 calendar days between the notification of the prequalification and the notice of the bid.

If the bid is international, the prequalification notice and the notice of invitation to submit offers will also be published abroad, in one or more newspapers with wide circulation. It may also be communicated to Embassies or Consulates of countries that have potential interested parties and may be published by telematic means. In these cases, the deadline for submitting bids, starting from the last publication, must be sufficiently long so as not to restrict the participation of potential bidders.

### 2.2.2 Prequalification requests:

The interested parties may request clarifications, and a response must be provided before the expiration of the deadline for submitting the documents. Any relevant clarification will be communicated well in advance by letter to all interested parties and, if necessary, the deadline for submitting prequalification applications may be extended.

### 2.2.3 Presentation of appeals:

The specific laws and regulations on public procurement in Honduras does not include any appeal procedure. Those who need to appeal must use the mechanisms provided in the Administrative Procedure Law. The administrative challenge mechanisms are the following:

- **Appeal for Reinstatement:** An appeal for reinstatement will proceed against the resolution issued by a single or second instance by the Administration, and it must be submitted before the body that issued it. The reinstatement may be requested within 10 days following the notification of the contested act.

- **Appeal:** The appeal must be submitted before the body that issued the contested act, and he will forward it to his superior for its decision, along with the file and its report, within five (5) days. The term for filing the appeal will be 15 days. After 1 month from the filing of the appeal without notification of its resolution, it will be understood that it was rejected.

- **Appeal for Review:** The Appeal for review applies against final acts, in other words, resolutions. This appeal is possible in the following circumstances: a) When the act was issued with an evident and manifest error of fact, affecting the substantive issue, provided that said error is fully demonstrated by the documents included in the file; b) If, after the resolution is adopted, decisive documents appear ignored due to force majeure when the resolution was issued or which are then impossible to contribute to the file; c) When the resolution is based in a document that, at the time it was adopted, ignored any of the interested parties, having been recognized and declared false in a final judicial sentence, or whose falsehood was recognized or declared later; d) When having adopted the resolution by virtue of testimonial evidence, the witnesses were convicted in a final judicial sentence for false testimony given in the statements that served as the foundation; and, e) When the resolution is issued with prevarication, bribery, violence, or other fraudulent machinations, and it was declared so by a final judicial sentence. The appeal for review must be filed with the competent Secretary of State, within 2 years from the date of notification of the contested resolution, in the cases referred to in the first cause of the preceding paragraph. In the other cases, the term will be 2 months, counted from the day the ignored documents were discovered or from the date the court ruling was final. The resolution of the appeal will be issued within 2 months following its filing.



The administrative claim must be resolved within a period of 60 days after it was submitted. If the resolution is negative or if it does not occur within the period indicated in the previous paragraph, the interested party may initiate the corresponding actions in court.



Characteristics	Bidding	Public and Private Tendering	Direct Contracting
Advertising	Public: Official newspaper gazette and Honducompras. Private: the institution will extend the invitation to participate to at least 3 bidders registered in the Suppliers' Registry.	Public: a notice will be published in the official gazette and Honducompras. Private: the invitation will be addressed directly to at least three interested parties.	Is not indicated in the law.
Possibility to object to the poster	Clarification or additions to the bid poster, are possible in each bid poster will indicate the respective term.	Potential bidders in a contracting procedure may request clarifications to the Bidding Documents within the term established for such purpose.	Is not indicated in the law.
Total of bidders to invite	Public: To all those interested in offering	It is not regulated.	It is not regulated.
Number of bids analyzed	All the bids received.	All bids submitted.	Is not indicated in the law.
Deadline for submitting bids	The period between the invitation and the date of submitting bids will not be less than 15 calendar days.	The law does not set a time limit, each tender poster must indicate the time limit for receiving bids.	The law does not set a time limit, each tender poster must indicate the time limit for receiving bids.
Deadline to award	Is not regulated by the Law.	It is not regulated.	It is not regulated.
Appeals against the act of awarding the contract	The specific laws and regulations on public procurement in Honduras does not include any appeal procedure	The specific laws and regulations on public procurement in Honduras does not include any appeal procedure	The specific laws and regulations on public procurement in Honduras does not include any appeal procedure

### 3. PLATFORM FOR ADMINISTRATIVE CONTRACTING

Honduras conducts all public procurement through a single public procurement platform called Honducompras, which belongs to the Regulatory Office for State Contracting and Procurement (ONCAE). This platform can be accessed at the following link<sup>13</sup>.

In order to become a supplier, it is mandatory to be previously registered in the Suppliers' Register (centralized and digitized in ONCAE). The supplier must prove that it is duly registered in order to become eligible to be awarded a contract.

The registration procedure for the Suppliers Registry will be similar for all interested parties. It must be done at the request of the interested party, providing the following requirements:

- Personality, nationality, and power of representation

- Economic and financial solvency
- Affidavit stating that the interested party is not included in any of the disabling circumstances
- Certification of the composition of capital stock
- Technical and professional suitability
- Specialty or areas of activity
- Complete address of the establishment and means to receive notifications
- Licenses of representatives, agents, or distributors of foreign commercial houses, if applicable
- Registration in the corresponding professional association, if applicable
- The deadline for registration is 10 business days from the day following the correct filing of the required information.

13. <https://honducompras.gob.hn>



- Regarding foreign natural or legal persons, they must prove their capacity by certifying the resolution of the Executive Power proving their authorization to carry on business in Honduras and their registration in the Mercantil Section of the Public Registry. However, when the bid poster stipulates, foreign companies may submit bids with the sole presentation of the document proving their legal constitution in the country of origin, authenticated by the respective Honduran Consulate, having to comply with the requirement before the award occurs. The foregoing is understood without prejudice of the obligation of registration in the Registry of Suppliers and Contractors, in which case the admission of the application for registration will be conditional on subsequent compliance with the requirement regarding the certification of the Executive Power resolution.
- On the other hand, any document issued abroad must be authenticated by the respective Honduran Consul and by the Ministries of Foreign Affairs and of Governance and Justice, with its official translation into Spanish.

#### 4. UPCOMING OPPORTUNITIES

The platform for viewing future opportunities will be visible on the aforementioned Honduras purchasing platform (Honducopras) and the way to register and log in is described above. This should display the awarded and available tenders.

#### Future administrative contracting plan

ONCAE is responsible for formulating the annual plans for contracting and public procurement. Said plan must include the goods, works, or services that are required and the dates on which they must be available, in order to efficiently schedule the contracting procedures.

The Annual Operational Plan (POA) of each institution can be accessed at the following link<sup>14</sup>. The plans must be reviewed on January each year, after the start of the execution of the corresponding budget, in order to update them with the estimates of income and expenses finally approved.

The registration process will be subject to the principles of simplification in procedures and will have no cost. For the purposes of registration, the Registry will operate by specialties or areas of activity, such as public works, supplies, services, or consulting.

#### 5. ACCOUNTABILITY, INTEGRITY AND TRANSPARENCY OF PUBLIC PROCUREMENT SYSTEMS

In Honduras, the bidders' access to the information related to public procurement is public, as well as the transparency in all the procedures and the possibility for the interested parties to find out about the initiation of a procedure or the need to register in the Supplier Registration.

However, it is prohibited to provide information that by its nature is considered secret, or that could place a bidder in an advantageous position over another, or the documents that are defined in the Terms and Conditions as confidential access because they refer to breakdown of financial statements, client portfolio, or any aspect related to production processes, computer programs, or similar. Any information, verbal or written, related to the examination or evaluation of the bids and on the award recommendation, cannot be provided between the public opening of the bids and when the award of the contract is finally notified.

In the following link, the supplier can access the Transparency Portal of the Secretary of State for General

Government Coordination, which is a reference model of transparency and adherence to the Law of Transparency and Access to Public Information that came into force in 2014:<sup>15</sup> In the Planning and Accountability tab the supplier will find a special section for tenders, public procurement, contracting, and auctions.

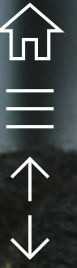


14. <http://h1.honducopras.gob.hn/PACC/Default.aspx>

15. <https://portalunico.iaip.gob.hn/portal/index.php?portal=24>



# PUBLIC PROCUREMENT IN NICARAGUA



## NICARAGUA

**1. REGULATORY FRAMEWORK.****1.1 Laws and regulations**

- Political Constitution.
- Law No. 737, of Administrative Contracting of the Public Sector.
- Law No. 737 General Regulations.
- Sector,
- Law No. 935 and its regulations.

**2. ADMINISTRATIVE CONTRACTING REGIME****2.1 Types of bids**

Depending on the amount of the contract or the special circumstances of a contractual nature provided by law, the Public Sector contracting shall be carried out through one of the following processes:

**2.1.1 By bidding**

The types of bidding procedures are as follows:

**2.1.1.1 Public bidding.**

This is the procedure to be observed for the selection of the particular contractor in those procurements exceeding three million Córdoba's C\$3.000.000.00, which amount in Euros corresponds to €68,730.00 as established by Law. The number of bidders or bidders is unlimited, since all those natural or juridical persons who, in accordance with the regulations in force, are in a position to participate in the bidding process, may participate.

The amounts established in the preceding article shall be updated by Ministerial Agreement issued by the Ministry of Finance and Public Credit each time the accumulated inflation rate, determined by the competent authority, reaches a percentage of ten percent (10%) as from the entry into force of the administrative contracting law.

Stages and Procedures of the Public Bidding.

All public bidding procedures shall comprise five linked and preclusive stages:

- Initial Resolution
- Invitation to Bid
- Presentations and opening of offers.
- Evaluation of offers and recommendation
- Award Resolution.

Public bidding includes the procedures and regulations necessary for its proper execution, which are as follows:

- Preparation of the Bidding Terms and Conditions.
- Clarification and Approval of the bidding documents.
- Correction of the bidding documents and conditions.
- Modification or Withdrawal of Bids Submitted.
- Clarification of Offers.
- Disqualification of the Offeror
- Rejection of Offers
- Preparation of the recommendation report
- Award or Re-award.
- Declaration of Bidding Deserted
- Suspension and Cancellation of Bidding Procedure

**2.1.1.2 Selective Bidding.**

It is the procedure to be observed for the selection of the individual contractor in those contracts whose amounts as established by law are greater than five hundred thousand Córdoba's (C\$500.000,00) which amount in euros corresponds to €114.550,00, and up to three million Córdoba's (C\$3.000.000,00) which amount in euros corresponds to €68.730,00.

The amounts established in the preceding article shall be updated by Ministerial Agreement issued by the Ministry of Finance and Public Credit each time the accumulated inflation rate, determined by the competent authority, reaches a percentage of ten percent (10%) as from the entry into force of the administrative contracting law.

Any selective bidding process shall include the following collateral and preclusive stages:

- Initial Resolution
- Invitation to Bid
- Presentations and opening of offers.
- Evaluation of offers and recommendation
- Award Resolution.

As applicable, the provisions established for the public bidding process shall apply to the selective bidding process. The process will begin with a reasoned resolution issued by the highest administrative authority of the contracting entity. This resolution must establish the purpose of the contracting, the public purpose to be satisfied, a reference of the justification within the Budget of the National Investment Plan and the preparation of the bidding terms and conditions that will govern the process.



### 2.1.2 Minor Procurements.

It is the administrative procedure to be observed for the selection of the individual contractor in those contracts for works, goods or general services, which do not exceed the amount of five hundred thousand Córdoba's (C\$500.000,00), which amount in euros corresponds to €11.455,00, the procedure for this modality shall be established by the Regulations of the Law.

The amounts established in the preceding article shall be updated by Ministerial Agreement issued by the Ministry of Finance and Public Credit each time the accumulated inflation rate, determined by the competent authority, reaches a percentage of ten percent (10%) as from the entry into force of the administrative contracting law.

In this type of contracting, no less than three suppliers are invited to select the particular contractor and thus forge the will of the public administration that will allow the creation of the contractual consent, which will be materialized in the acquisition of the goods, works or general services requested of lower amounts established by the Law. Some of the characteristics of the procedure are as follows:

- In this type, it is characterized by the fact that the act of presentation of bids will be of a private nature.
- The call for bidders is made by direct invitation to three or more suppliers, as appropriate in relation to the opportunity, the amount, and the complexity or size of the procurement, without detriment to the publication of the invitation to bid in the single procurement portal. This form of invitation does not limit other suppliers not invited to participate in the process.
- to encourage the participation of micro, small and medium-sized enterprises, conditions for participation shall be established related to; the eligibility of the bidder, its technical and economic capacity, which do not exceed the thresholds of the object to be contracted, and participating bidders may also, through the modality of joint bids, join their capacities and comply with the conditions of the contract.
- The Contracting Entities, when establishing the specifications related to the object to be contracted, shall promote the consumption of national goods and services. Preference will be given to micro, small and medium-sized companies.
- Bids must be submitted at the place indicated

and within the time limit established in the purchase request. The bidders shall formulate their offers without being subject to modes or conditions that prevent an outright acceptance by the procuring agency or entity. The offers sent and received by the permitted means must contain the time and date of receipt.

- The Technical Contracting Committee shall verify the conformity of the offer to the required quality, proceeding to award the offer with the lowest price. The highest administrative authority may totally or partially award, declare deserted, suspend or cancel the procedure, by means of a written Administrative Act, within two (2) working days after receiving the recommendation of the Technical Contracting Committee.

At the end of the evaluation of the bids, the highest executive or administrative authority, as the case may be, shall issue a resolution or award letter in minor contracts stating the following aspects:

- Contracting Reference
- The name(s) of the Awarded Bidder(s).
- Amounts awarded
- Brief description of the goods, works or services awarded.
- Name of the Entity's representative authorized to sign the contract.

In the event that the Awarded Bidder does not appear to withdraw the purchase order or sign the contract within forty-eight hours from the date of communication of the Award, the Institution may cancel the Award and award the same to the next Bidder in the order of priority determined.

### 2.1.3 Tendering.

This is the procedure to be observed for the selection of consulting firms or individual consultants, regardless of the estimated amount to be contracted. The technical, professional or business qualifications of the participants, of the work teams and of the technical bids when required, will determine the award. Price shall not be the determining factor in comparing bids.

The omission of the procedures established by law for each process will be sanctioned with the nullity of the process.

When a procedure has been determined based on the preliminary estimate of the business, and subsequently the bids submitted exceed the limits for the application of the respective process, the bidding shall not be



invalidated if this excess does not exceed ten percent (10%) and sufficient budgetary resources are available to assume the expenditure.

For the selection of consulting firms or individual consultants, regardless of the estimated amount to be contracted, the agencies and entities of the Public Sector shall do so through a competitive bidding process. As applicable, the provisions established for public bidding shall be applied to the bidding process.

- In the selection and contracting of individual consultants a simplified process will be applied, based on the qualifications of the participants, not requiring the presentation of technical and/or economic proposals by them.

Prior to the initiation of the selection process for individual consultants, the contracting agency shall comply with the following requirements:

- Constitution of the evaluation committee.
  - Determination of the evaluation system.
  - Terms of reference, scope of services, execution schedule of the services to be provided, available budget and model contract.
  - Call for bids. The term for the presentation of resumes and expressions of interest shall not exceed eight (8) calendar days, counted from the date of publication of the call for bids in any of the media. The request for resumes and expressions of interest must be included in the call for applications.
- In the selection of consulting firms, the bidding process shall be subject to the following rules:
- The agencies and entities of the Public Sector shall prepare the terms of reference, including the description of the work to be performed, the general and special conditions of the contract, the criteria for prequalification of the bidders and for qualifying the bids, the deadline for their submission and the other conditions and requirements established by regulation.
  - As part of the bidding process, a prior prequalification stage shall be carried out in order to select potential participants according to their qualifications, who shall be invited to submit proposals.
  - Depending on the purpose of the contract, the following methods will be used for the selection of these consulting firms: selection based on quality and cost; selection based on quality; selection based on a fixed budget; selection based on the lowest cost; and selection based on the qualifications of the consultants. The procedure for the above selection methods.



Characteristics	Bidding	Tendering	Minor Contracting	Simplified Contracting
Advertising	The call for bids, regardless of the modality applied, must be published in the single contracting portal, and a notice of the availability of the notice must be published in the Official Gazette.	The call for tenders, must be published in the single contracting portal, and a notice of the availability of the notice must be published in the Official Gazette.	Is not indicated in the law.	Is not indicated in the law.
Possibility to object to the poster	During the period for the evaluation of the bids, the Evaluation Committee shall disclose the results of the evaluation no later than three (3) days prior to the expiration thereof, so that the participating bidders may request the clarifications they deem pertinent within a period of no more than two (2) days, which shall be addressed by the Committee in the Evaluation.	During the period for the evaluation of the bids, the Evaluation Committee shall disclose the results of the evaluation no later than three (3) days prior to the expiration thereof, so that the participating bidders may request the clarifications they deem pertinent within a period of no more than two (2) days, which shall be addressed by the Committee in the Evaluation and Award Recommendation Minutes.	Is not indicated in the law.	Is not indicated in the law.
Total of bidders to invite	To all those interested in offering	To all those interested in offering	The number of suppliers invited is not less than three to select the particular contractor and thus forge the will of the public administration that will allow the creation of the contractual consent.	Is not indicated in the law.
Number of bids analyzed	All the bids received.	All bids submitted.	All bids submitted.	one or more suppliers will be invited directly, as appropriate in view of the timeliness, complexity or size of the contracting.
Deadline for submitting bids	The law does not set a time limit, each tender poster must indicate the time limit for receiving bids.	The law does not set a time limit, each tender poster must indicate the time limit for receiving bids.	The law does not set a time limit, each tender poster must indicate the time limit for receiving bids.	Is not indicated in the law.
Deadline to award	The award decision shall be issued within a maximum period of three (3) business days after receiving the recommendation of the Evaluation Committee.	The award decision shall be issued within a maximum period of three (3) business days after receiving the recommendation of the Evaluation Committee.	Is not regulated by the Law.	Is not indicated in the law.
Appeals against the act of awarding the contract	Appeal within 3 days after notification of the decision.	Appeal within 3 days after notification of the decision.	Is not regulated by the Law	Is not indicated in the law.



## 2.2 Ordinary administrative contracting procedure

The Information Registry of the Public Sector Procurement Administration System is the entity in charge of registering all administrative procurements entered into by the Public Sector, as well as updating the information concerning the procurement files and all natural and legal persons contracting and wishing to contract with the State.

The agencies and entities of the Public Sector, using the basic classifier of the Public Sector Contracting Administration System, are obliged to keep said information updated and communicate the data to the Information Registry.

All natural or juridical persons that bid must be registered in the digital Registry of Suppliers, which shall be constitutive. Foreigners not residing in Nicaragua shall be required to register as a requirement for the formalization of the contract awarded to them.

All procurements except minor procurements shall integrate an Evaluation Committee that shall be in charge of recommending the evaluation and qualification of the bids submitted and the preparation of a report prior to the awarding of the contract. The Evaluation Committee shall be constituted by means of a resolution of the highest administrative authority of the bidding organ or entity and shall be composed of personnel of technical quality and experience.

The Evaluation Committee shall be composed of at least three members:

- The Coordinator of the Procurement Area;
- A Legal Advisor of the contracting agency or entity; and
- An expert in the subject matter of the procurement.

At the beginning of each budget period, the highest administrative authority of the contracting organ or entity shall constitute a collegiate body, composed of a maximum of three members, called the Technical Procurement Committee, to recommend the evaluation and qualification of the bids submitted in the minor procurement processes to be carried out during that period. All of the procedures vary depending on the type of bidding as indicated in the previous chapter.

### 2.2.1 Suitability requirements for contracting

In order to contract with any agency or entity of the Public Sector, regardless of the contracting process,

bidders must meet the following requirements:

- Have the capacity to bind and contract, in accordance with common law.
- Not be subject to any situation of prohibition or inhibition, under the terms of this Law.
- Not be in bankruptcy or liquidation proceedings or in the process of liquidation.
- Not to be under judicial interdiction.
- To be registered in the registry of suppliers.

Without prejudice to the general suitability requirements established in this article, each contracting entity or body may establish additional requirements.

### 2.2.2 Prohibition to be a bidder

The following may not be suppliers of the state, nor enter into contracts with the agencies and entities of the Public Sector:

- Public officials, during the exercise of their office, directly or indirectly elected.
- Legal entities in whose capital stock the public officials participate.
- Those who have submitted bids in the same process or are spouses or partners in a stable domestic partnership or are within the first degree of consanguinity or first degree of affinity with any other person who has formally submitted a bid for the same selection process.
- Those who are partners or associates of a legal entity that has submitted a bid in the same selection process.
- Companies in which the legal representative or any of its partners is the spouse or partner in a stable domestic partnership or is related in the first degree of consanguinity or first degree of affinity with the legal representative or with any of the partners of a company that has formally submitted a proposal for the same bidding.
- Natural persons who have been judicially declared responsible for the crime of international bribery or any other crime against the economic patrimony or the public administration.
- Public officials, within the year following their retirement.



- The spouse, the partner in a stable common-law relationship and relatives up to the fourth degree of consanguinity and second degree of affinity of public officials and public servants covered by the prohibitions contemplated in this Law.
- Public employees who are involved in administrative contracting processes.
- Persons who have intervened as advisors or participated in the preparation of specifications, designs, construction plans or budgets for contracting.
- Suppliers who are registered as sanctioned in the corresponding module of the Information Registry in accordance with the provisions of the Law and during the time it is in force. In the case of legal entities, this prohibition extends to their partners or associates.

### 2.2.3 Appeals

According to the current law, all appeals shall be filed within the established term before the competent authority and must include the reasons why the administrative act is challenged. The admission of the appeals filed will have suspensive effects (Article 110 of the Law).

When appeals are not filed within the established term, and the procurement process starts its next phase, it shall be considered as a waiver of bidders to all claims generated by alleged faults incurred in the precluding stage. Below are the appeals that may be filed:

#### • Appeal for clarification (Article 111 of the Law).

- This appeal proceeds against the bid assessments by the Assessment Committee.
- The appeal must be filed within the term of the bid assessment. The Assessment Committee shall release the results of the assessment no later than 3 days before its expiration, so that bidders may request clarifications no later than 2 days.
- The Committee must hear the appeal and record it in the Minute on the Assessment and Award Recommendations, which shall be communicated to the highest administrative authority and to all bidders per the regulations of the Law.

#### • Appeal for challenge (Article 112 of the Law).

- This appeal is relevant for public, selective, and competitive bid procurements. Bidders may challenge award resolutions and those that declare bids void when the appellant considers that the

bid/proposal assessment phase was irregular.

- The appeal must be filed within three business days from the notification of resolution.
- The appeal must be filed before the General Attorney's Office of the Republic, with copy to the senior management of the contracting entity. The General Attorney's Office of the Republic shall resolve the appeal, addressing the aspects subject to it.
- If the General Attorney's Office of the Republic does not issue any resolution to the appeal for challenge within 10 business days, the appellant may file an appeal for annulment before the Office of the General Comptroller of the Republic.

#### • Appeal for annulment (Article 116 of the Law).

- During the public, selective, or competitive bid process, when the General Attorney's Office of the Republic dismisses the challenge or fails to resolve it within the established term, the bidder may file an appeal for annulment.
- This appeal shall be filed within 10 business days after the notification of the resolution of the appeal for challenge.
- This appeal shall be filed before the Office of the General Comptroller of the Republic.
- Any bidder participating in the procurement process may file the appeal for annulment, which must include the substantial violation of the legal and administrative system that is alleged as the reason for the annulment.
- The appeal for annulment must be resolved within twenty business days after filing it.
- The resolution issued by the Office of the General Comptroller of the Republic may declare total or partial annulment of the procurement process.
- The administrative route is exhausted with the resolution of the Office of the General Comptroller of the Republic.

### 2.3 Special administrative contracting procedures

#### 2.3.1 Simplified contracting

Exceptionally, the agencies and entities governed by the law may enter into administrative contracts by means of simplified contracting through a resolution of its highest administrative authority in the following specific cases:







- Contracts made by the National Police, exclusively for police purposes, necessary for the maintenance and reestablishment of order and public safety in the country.
- Procurements made by the Army of Nicaragua for exclusively military purposes, necessary to safeguard the integrity, independence, security and national defense, shall be made through the Simplified Procurement procedure, and those made for provisioning in peacetime shall apply the corresponding procedure in accordance with this Law.
- Procurement in emergency or public calamity situations that affect the entire community or an important sector thereof or that unexpectedly cause the total interruption of the operations of the contracting entity. The emergency situations contained in Law No. 337, "Law Creating the National System for the Prevention, Mitigation and Attention to Disasters", must be previously recognized and declared, in each case, by the competent authority in accordance with the relevant Law, in order to justify the simplified contracting. In the case of emergency or urgent situations not derived from disasters or public calamity, which prevent the continuity of the entity's service, they must be approved by the highest administrative authority. Procurements made in such situations must be directly related to the abnormality to be corrected. In any case, it must be situations that make it impossible to resort to the corresponding selection process. Once the above decision has been adopted by the highest administrative authority of the contracting entity, it must be sent to the Office of the Comptroller General of the Republic with all its supports within ten (10) working days following its adoption, for the purposes of subsequent control, as well as the respective contract when it is signed. Once the contract has been executed, the contracting entity shall proceed, as soon as possible, as permitted by the emergency circumstances, to complete the necessary procedures for the approval of the expenditure. When the situation intended to be invoked by this modality is the result of a lack of planning on the part of the contracting entity, this shall engage the personal liability of the officials responsible for such omission.
- When there is a sole supplier in the market and the good or service cannot be substituted by another, without loss of quality, price, guarantees or any other relevant circumstance.
- Acquisition of provisions existing in the market, fairs or directly from the producers, provided that these are acquired for non-commercial purposes, for the operation of the entity and to guarantee compliance with the collective bargaining agreements.
- Purchases with petty cash funds, which shall be made in accordance with the Budget Execution Rules and the regulations issued by each entity or agency of the Public Sector.
- If so required by the protection of industrial or intellectual property rights, such as patents, copyrights and other similar rights, when there is only one source or when the professional, technical or artistic specialty that is the object of the contractual obligations does not allow for a competitive bidding process.
- Contracts for professional services, when dealing with specialized matters or when there are no line personnel for that purpose.
- Inter-administrative contracts entered into between public sector bodies or entities, except when one of the parties carries out a private economic activity, in competition with commercial entities.
- When the purpose of the contracting is artistic works, as well as recreational activities, subscriptions in newspapers, magazines of any type and nature, and the contracting of advertisements.

The contracts entered into as a result of a simplified contracting procedure shall be registered in the single procurement portal.

The responsibility for the simplified contracting shall fall on the highest administrative authority and the officials who participated in the corresponding contracting. The regulations in force state that the most favorable market conditions for the Administration shall always be sought.

### 3. PUBLIC PRIVATE PARTNERSHIP (PPP)

The Public-Private Partnership in Nicaragua, (hereinafter “PPPs”) have a recent regulatory framework, being established in Law No. 935 and its Regulations, Decree No. 05-2017. The main purpose of these regulatory bodies is to regulate and promote the association between the public and private sectors, establishing provisions regarding the formulation, contracting, financing, execution, operation and termination of projects based on a Public-Private Partnership.

The PPP Project Identification and Selection Process will be established in an instruction issued by the General Directorate of Public Investments (DGIP), which will contain at least the following:

- The process for the submission of PPP project proposals by the Contracting Institutions, including stages of the process, forms, deadlines and conditions;
- The scope of the prefeasibility and feasibility studies, which shall be the responsibility of the Contracting Institution.

It is the responsibility of the DGIP to decide on the suitability of the project to be implemented through the Public-Private Partnership scheme, for which purpose it will analyze the suitability of the PPP scheme and the sustainability and fiscal risk analysis, in coordination with other General Directorates of the MHCP competent in this area. This is a decentralized entity that belongs directly to the Nicaraguan Ministry of Finance. National or foreign individuals, or legal entities interested in submitting private initiative projects, may do so under the terms and conditions established in the Bases of the Annual Competition implemented by the DGIP in coordination with the Contracting Institutions.

Private proponents must submit to the DGIP the project proposal with the documentation established in the Regulations and in the bidding conditions. The proposal will be sent for its evaluation to the respective Contracting Institution, which must decide, within a period of three months from the date of receipt by the Contracting Institution, on the national interest in the Private Initiative Project.

There are these websites<sup>16</sup> that are official entities that provide support to foreign investors and that are involved in public-private partnership projects.

However, these do not have a platform to process 100% virtually a Public Private Partnership, but in the website of SNIP<sup>17</sup> is found the contact numbers and e-mails.

Types of project finance:

- Self-sustainable: these are the projects arising from collected fees directly from users that cover all project costs during the valid term of the contract and allow the private participant to obtain a private or financial profitability based on the undertaken risk.
- Sponsored: these are the projects that require financial resources from the government as transfers or securities that imply a tax expenditure from the Ministry of Finance, in case of non-payment from users or when they are enough to cover the project costs.

In the event that two or more substantially similar private initiative projects are presented, the DGIP in coordination with the Contracting Institution will choose the most convenient for the state, in accordance with the criteria established in the Bidding Terms and Conditions. The stages in which the Bidding process is developed must be continuous, consecutive and preclusive, being the following:

- Invitation to Tender for Private Initiatives.
- Presentation and Analysis of Proposals of Private Initiative Projects.
- Evaluation and Declaration of National Interest.
- Notification of the acceptance of the proposal and request for additional studies.
- Letter of commitment and guarantee of seriousness.
- Presentation and evaluation of the Final Proposal of the Private Initiative Project.

The DGIP will publish an invitation of the availability of the bidding terms and conditions in the Official Gazette and in at least one written media of national circulation; in turn, the invitation and the bidding terms and conditions will be available to interested parties in the web portals of the integrated management information system of public-private partnership projects and of the Investment and Export Promotion Agency (PRONicaragua<sup>18</sup>), and in specialized websites, in order to widely disseminate the Bidding.

The Bases of the Competition shall include at least the following contents:

- The areas of interest to the country, on which it aspires to receive proposals, without prejudice

16. <http://pronicaragua.gob.ni/es/>

17. <http://www.snip.gob.ni/>

18. <http://pronicaragua.gob.ni/es/>



that the proponents may make additional proposals, which to their understanding and based on their studies are of interest to the country, considering their impacts on welfare and economic development.

- The term to receive proposals is six months, counted from the date of publication of the invitation to bid, which may be extended by up to 50% at the duly justified request of the potential bidders. This period must be used by the proposers for the development of the contents required in the presentation of their proposal.
- Evaluation criteria, method and applicable parameters for the selection of proposals.
- The forms, formats and other requirements necessary for the bidding process.
- The additional deadlines to detail or deepen technical, economic, financial, and environmental aspects of the selected proposals;
- The conditions and terms of reimbursement for selected studies.
- Means and deadlines for requesting revisions or clarifications to the evaluation and results of the bidding process.

The Contracting Institution, together with the DGIP, will review the proposals of private initiatives from the technical, financial and economic perspective. The DGIP will make a pronouncement on the social profitability, affordability, fiscal sustainability and convenience of its implementation through the Public-Private Partnership mechanism. The DGIP and the Contracting Institution may consult other General Directorates of the MHCP and other institutions of the Public Sector on specific issues. All of this within the three-month period in which the DGIP and the Contracting Institution must decide on the proposal. In case the evaluation of the Contracting Institution and the DGIP is favorable, the Contracting Institution shall declare the National Interest on the Private Initiative Proposal. This declaration is only intended to inform the applicant of the interest in knowing in detail the proposal and does not imply recognition of any right whatsoever.

The Ministry of Finance and Public Credit will be responsible for overseeing compliance with the terms and conditions of the PPP Contract during the execution phases of the works.

The Contracting Institution will publish the Declaration

of National Interest in the Official Gazette, in at least one written media of national circulation, in the web portals of the integrated management information system for public-private partnership projects and PRONicaragua.

In the case of unsuccessful private proposals, the proponents will be notified of the decision and the evaluation obtained, after the publication of the declaration of national interest. The Contracting Institution will notify the proponent of the National Interest for the proposal submitted, by means of the Proposal Acceptance, in which additional studies may be requested, if necessary, to deepen the proposal.

The notification shall include, at least:

- Insertion of the declaration of national interest.
- The list of additional studies required and their specifications, as the case may be.
- The deadline for the delivery of the final proposal, including the additional studies.
- Form, amount and conditions of the Bid Bond.

Within ten days from receipt of the notification of acceptance of the proposal, the Tenderer may request an extension of the deadline for delivery of the Final Proposal, which may be extended up to one third of the original deadline. The Contracting Institution in turn shall have a term of up to ten days to decide on the request for extension of the delivery term.

The proposer shall submit the final proposal within the term agreed with the contracting institution. The DGIP, the Contracting Institution and the proposer may hold informative meetings for prior review of the partial and final studies carried out, in order to adequately manage their completion. In no way does this prior knowledge imply acceptance of the final proposal. Once the studies have been completed, the proponent shall submit the Final Proposal of the Private Initiative Project, which shall contain the same scopes presented in the initial proposal, with the corresponding updates and the studies carried out.

The DGIP, together with the Contracting Institution, will review the final proposal and decide on the definitive interest in the private initiative project. The result will be informed by an official communication to the proponent and will be published in the integrated management information system of public-private partnership projects.



## 4. PLATFORM FOR ADMINISTRATIVE CONTRACTING.

### 4.1 The system of electronic administrative contracting (SISCAE).

The SISCAE (Electronic Administrative Contracting System) of Nicaragua is a governing body that regulates the interaction and the process of procurement and contracting of the state with the various media and public and / or private bodies. Its commitment is based on a legal, transparent and efficient procurement ethic. It has the Nicaraguacompra platform to do so.

The Registry of State Suppliers is the only official public registry for all natural or legal persons, national or foreign, who wish to contract with the entities and agencies of the public sector.

#### 4.1.1 Registration requirements for foreigners

- Go to the following web address: [www.nicaraguacompra.gob.ni](http://www.nicaraguacompra.gob.ni) click on the "Citizenship section" that says, "Register as a new State Provider".
- Once the supplier clicks on the option described above, he/she will be presented with an introduction in which will be given the pertinent recommendations for the supplier's registration and then click on start registration.

Steps to proceed with registration:

- Enter all the information requested in the forms.
- The supplier can always use the back button if he/she have omitted any information or need to correct it.
- Once completed, a message will confirm the successful registration and an email will be sent to the supplier's email address.
- Once the information provided has been verified, the supplier shall be informed of the acceptance or rejection of the registration. If the application is accepted, the supplier will be provided with a username and password to use on the site to access the Certificate of Registration. Will be required to modify the password provided the first time the supplier access the site. If all the data is correct press CONTINUE. By means of a message displayed on the screen and by means of an e-mail, the system will confirm the successful entry of the information. The DGCE will verify the information provided with DGI and within the next 24 hours will receive an e-mail confirming the acceptance of the registration or the reason for rejection of the application. If the application is accepted, the following will be indicated in the e-mail received: User and Password to access the system.
- If the supplier wishes to modify the password received, he/she must consider that it must contain

a minimum of 7 digits between letters, numbers and characters and must be located in the main menu of the system.

- The supplier must go to the main menu on the left and click on the Change Password tab.
- At the bottom the supplier will find the Start Registration button.
- Next, he/she will be presented with the registration form on the screen, where the supplier must fill in the requested data, with an asterisk is indicated the mandatory data.

#### Instructions to fill out the form for legal entities

Company's name	full name of the company, as it appears in the company's Memorandum of Incorporation.
Trade Name	trade name registered with the General Directorate of Revenue (if not registered, do not complete).
Type of legal entity	select the type of legal entity that corresponds to the company.
Dato of Constitution	date on which the company was incorporated.
Economic classification	indicate the economic activity that the company exercises through the catalog of goods and services, to do this click on where it says select from the Catalog, which is located on the right side of the screen.
Economic activities	select the activity according to the company's business.
Total number of employees	this option allows to select the number of workers in ranges established in the system combo.
Represented companies	This option allows to register those companies that the supplier represents by clicking on the "Enter companies to represent" field.
Email address	Enter the supplier email address.
Sales manager email address	Indica the email address of the sales manager.
Address	the supplier's exact address.
Department	departmental location of the rental where the supplier is registered.
City	indicate the city where the company is registered.
Phone Number	indicate a telephone number.
Fax	indicate the fax number.
P.O Box Number	indicate the P.O. Box number.
Company's website	indicate the company's web-site.



## Instructions to fill the form Individuals

First Surname	first last name as it appears on the identity card
Second Surname	second last name as it appears on the identity card
Full Name	full name as it appears on the identity card
Trade Name	trade name registered with the General Directorate of Revenue (if not registered, do not complete).
ID	enter the ID number without hyphens or spaces
Economic classification	indicate the economic activity that the company exercises through the catalog of goods and services, to do this click on where it says select from the Catalog, which is located on the right side of the screen.
Economic activities	select the activity according to the company's business.
Total number of employees	this option allows to select the number of workers in ranges established in the system combo.
Represented Companies	This option allows to register those companies that supplier represents by clicking on the "Enter companies the supplier represents."
E-mail address	Enter email address.
Sales manager email address	indicate the email address of the sales manager.
Address	the supplier's exact address.
Department	departmental location of the rental where the supplier is registered.
City	indicate the city where the company is registered.
Phone Number	indicate a telephone number.
Fax	indicate the fax number.
P.O Box Number	indicate the P.O. Box number.
Company's website	indicate the company's website.

- Once the supplier has clicked on the Continue button, he/she will be presented with the supplier prohibition regimes form screen where he/ she will be asked to fill in family information and companies in which the supplier is a partner.
- Once the information has been entered, the system will ask the supplier to accept the Supplier Affidavit.

- Finally, the screen indicates that the registration form has been entered successfully, the General Directorate of State Contracting (DGCE) will send confirmation of the registration to the supplier's e-mail within 24 hours<sup>19</sup>.

## 5.UPCOMING OPPORTUNITIES

The platform for viewing future opportunities will be visible on the aforementioned Nicaragua purchasing platform (Nicaraguacompra) and the way to register and log in is described above. This should display the awarded and available tenders.

### Annual Procurement Program.

All agencies and entities of the Public Sector, through the Procurement Area, shall prepare annually the "Annual Procurement Program" (PAC) and publish it in the first month of the budget period using the Basic Classifier of the Public Sector Procurement Administration System and it may be consulted digitally.

Likewise, in compliance with the Principle of Publicity, all agencies and entities of the Public Sector must prepare an annual "Projection of the Annual Procurement Program" and publish it two months prior to the beginning of the budget period using this Classifier. Once the Annual Law of the General Budget of the Republic is enacted, all agencies and entities of the Public Sector must confirm their "Annual Contracting Program" (PAC) and publish it through the same means in which the projection was published. The publication shall be made in the single procurement portal without prejudice to other forms of publication. The Plan and its publication shall be authorized by the highest administrative authority of the contracting entity and shall be visible in the virtual portal of NicaraguaCompra.

The publication of the Annual Contracting Program is a requirement to initiate any contracting process. It shall not be binding and, therefore, shall not constitute an obligation to contract or to initiate the process. At any time, the agencies and entities of the Public Sector may modify the program to include or modify procurements not considered in the initial projection, which must be justified and comply with the same publication requirements. Said plans may be consulted at the following link.

Also, in the Nicaraguacompra portal the supplier can search for all current bidding processes in the following link.

19 . [www.nicaraguacompra.gob.ni](http://www.nicaraguacompra.gob.ni)  
Manuales — Site ([nicaraguacompra.gob.ni](http://nicaraguacompra.gob.ni))





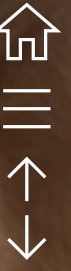
## **6. ACCOUNTABILITY, INTEGRITY AND TRANSPARENCY OF PUBLIC PROCUREMENT SYSTEMS**

As stipulated in the laws described above, one of the most important commitments in the Nicaraguan administrative regime is publicity and transparency, since the information contained in the Register will be available to the public in the single contracting portal administered by the Governing Body of the Public Sector Contracting Administration System. This information will have an administrative purpose without the inclusion or omission of any information affecting the status of the contractual rights and obligations of the parties to the administrative contracts entered into.

According to the principle of control established in the Contracting Law. The contracting activity of public procurement shall be controlled by the Comptroller General of the Republic in accordance with Law No. 681, Organic Law of the Comptroller General of the Republic and of the System of Control of the Public Administration and Control of State Assets and Resources, and the jurisdictional control shall be carried out by the Judicial Power.



# PUBLIC PROCUREMENT IN PANAMA.



## PANAMA

## 1. REGULATORY FRAMEWORK

## 1.1 Laws and regulatory.

- Political Constitution
- Public Procurement, Law 22, recently amended by Law 153.
- Public-Private Partnership (PPP), Law 93.
- Executive Decree 439, Regulation for Public Procurement.

For the subject of concessions there are special laws that, depending on the entity, must apply to each concession such as the Tourism Authority or the Panama Canal Authority. It should be emphasized that in the contractor selection procedure, the application of the general administrative procedure rules is used in a supplementary manner, and in its absence, the rules of civil and commercial procedure.

Concessions imply entering into an Administrative Contract with the Panamanian State, for the purpose of granting a person the provision, operation, exploitation, organization or management, whether total or partial, of a public service or the construction of a work intended for public use, as well as all the activities that are necessary for the adequate provision and/or operation of the work or service

## 2. ADMINISTRATIVE CONTRACTING REGIME

## 2.1 Types of bids

**2.1.1. Public Bidding:** The price is the determining factor in this type, provided that the requirements and technical aspects are complied with, it consists of a method used when the amount of the contracting is greater than fifty thousand balboas. (B/. 50.000,00), which in Euros is equivalent to four hundred eleven thousand one hundred eighty-five Euros (€411.185,00).

**2.1.2. Best Value Bidding:** Contractor selection procedure used when the goods, works or services to be contracted have a high level of complexity and the amount of the contracting is greater than five hundred thousand balboas (B/.500.000,00), which in euros is equivalent to four hundred eleven thousand one hundred eighty-five euros (€411.185,00).

**2.1.3. Bidding for Framework Agreement:** Contractor selection procedure through which one or more bidders will be selected, with whom a contract for goods or services or execution of works that do not imply a high level of complexity during a defined period of time will be signed. The selection criteria will be defined by the General Directorate of Public Contracting.

**2.1.4 Reverse Auction Bidding:** Bidding process with the purpose of obtaining the best price for a good, service or work for any institution, within a determined period of time and will be carried out by the General Directorate of Public Contracting, as well as by other entities that are authorized.

**2.1.5 Minor contracting:** Procedure that will allow the acquisition of goods, works or services that do not exceed fifty thousand balboas (B/.50.000,00), which amount in Euros is equivalent to forty-one thousand one hundred and eighty-five euros (€41.185,00) complying with a minimum of formalities and subject to the formalities and principles of contracting provided by the Law.

## 2.2 Ordinary Administrative Contracting Procedure

- Once the entity identifies the good or service or work it needs, it shall generate the request for order in the Online Quotation Platform, which shall contain the specifications and characteristics of the tender, its technical data sheet in the case of goods or supplies that so merit it and the detail of all the requirements and/or minimum requirements.
- The entity will proceed to establish the day and time of publication when the suppliers will be able to view the request for quotation online, in order to submit their bids according to the time predetermined in the platform.
- Once the request is published, all suppliers registered in the Electronic System of Public Contracting in the required item will receive a notification of the invitation to participate and will have to submit their bids within the established deadline.
- The invitation to quote online will be visible to all registered users of the Electronic System of Public Contracting "PanamaCompra" on the day established by the entity. Any supplier that is duly registered in "PanamaCompra" may send its quotation, if it is able to provide the required good or service.
- Once the predetermined period for submitting quotations has elapsed, the System will open the quotations entered, making a comparative table of them. In the event that no quotations have been received within the established period for submitting them, the System will automatically cancel the requisition, in which case the Entity must initiate a new online quotation procedure.
- While the first and second stages are being executed, in those cases in which the entity does not receive quotations after three (3) request processes, duly certified, through the platform, it may request quotations by any other technological or communication means.





- In the event that quotations have been submitted, the entity shall proceed to select the quotation or quotations necessary to meet its needs; the selection of the quotation or quotations shall be made based on the most beneficial price for the public interest and that complies with the technical aspects and the minimum requirements demanded in the Poster.
- If there are quotations with equal prices and that comply with the technical aspects and the minimum requirements of the entity, the entity shall choose the supplier that can supply the required quantity. In the event that the suppliers that have quoted the same price are able to supply the entity's demand, the entity may choose any of the equal suppliers. Once the quotation has been selected, the contracting agency shall request the selected bidder to submit the documents required to continue with the contracting process, which must comply with the requirements set forth in the Poster.
- Subsequently, the entity will proceed to register and publish the endorsed purchase order in the Electronic Public Procurement System "PanamaCompra".

### 2.3 Special Administrative Contracting Procedures

According to the Consolidated Text of Law 22 of 2006, when facts or circumstances arise that place the interests of the State at risk by the other methods of contractor selection, the institutions or entities may use the exceptional contracting procedure. The entity or institution that decides to use this method must submit a technical report and must comply with minimum information, signed by the responsible public servant and endorsed by the legal representative of the entity or to whom he/she delegates this power.

The special contracting procedure shall be applicable only in the following cases:

- Inter-institutional contracts entered by the State. Contracts that constitute extension of leasing of goods or services already in existence, whose amounts do not exceed three hundred thousand balboas (B/.300.000,00), whose equivalent amount in euros is the sum of two hundred forty seven thousand and twenty euros (€ 247.020,00).
- The hiring of legal services, whose amount does not exceed the sum of three million balboas (B/3.000.000,00), whose equivalent in euros is the sum of two million four hundred seventy thousand two hundred euros (€ 2.470.200,00) or its equivalent foreign currency, to attend lawsuits before foreign courts, including arbitration centers, in which Panama is a party.

Direct Contracting is a very special procedure that is authorized by different authorities, namely: Minister of Economy and Finance; National Economic Council (CENA); and, Cabinet Council. Always following the following assumptions;

- Contracts for the acquisition or lease of goods or services, in which the State acts as lessor or lessee, as well as the sale of goods or services of the State, in which there is no more than one bidder or in those in which there is no adequate substitute, provided that the sale is not based on the existence of possessory rights over real estate.
- In case of evident urgency, which does not allow the public act of selection of the contractor to be held.
- Exceptional situations of emergencies or disasters, prior declaration of the Cabinet Council.
- When they are exchange contracts for the acquisition of movable or immovable property, prior appraisal.
- Contracts exceeding three hundred thousand balboas (B/.300.000,00), whose equivalent in euros is two hundred and forty seven thousand and twenty euros (€ 247.020,00), which constitute simple extensions of existing contracts, provided that the price is not higher than the agreed price.
- Social benefit contracts, i.e., acquisitions of a good, service or work whose exclusive, specific and principal purpose includes the satisfaction of the basic needs of the citizens or the State.
- Contracts for works of art or technical works, the execution of which may only be entrusted to reputable artists or recognized professionals.
- Contracts entered by the National Assembly that exceed fifty thousand balboas, (B/.50.000,00), which amount in Euros is equivalent to forty-one thousand one hundred and seventy (€ 41.170,00).
- Contracts for the acquisition of products or services for townships or communities in multidimensional poverty.
- When the contracting involves goods and services for the development of scientific research or technology development activities.
- Contracts related to the security and defense of the State. Acquisition of security systems, equipment and sophisticated armament in defense of the State. It is excluded to use this contracting for the acquisition of ammunition, weapons, boots, uniforms, among others.



### 3. PUBLIC-PRIVATE PARTNERSHIPS (PPP)

The Government of Panama enacted the so-called Law 93 of September 19, 2019 which creates the public-private partnership (PPP) regime as an incentive for investment, social development and job creation at the end of 2020 the regulation of the stipulated rules of Law 93 of 2019 was issued.

Public-private partnerships is a broad concept, they are a long-term contract entered into between the public administration and private enterprise, where it is observed that a private company finances, builds and manages some element of a public service; and charges over several years, either to the end user or the Administration itself, or a combination of both.

Characteristics:

- PPP regulations are applicable to the central government, autonomous and semi-autonomous entities of the non-financial public sector, municipalities and commercial companies that are owned by the state for at least 51% of the share capital.
- The execution of this type of contracts is prohibited when the amount of the project is less than twelve thousand three hundred and fifty-five euros (€12.355,00).
- The approval or rejection, authorization and formulation of each PPP will be institutionalized through a governing body formed by the Minister of the Presidency, the Minister of Economy and Finance, the Minister of Public Works, the Minister of Commerce and Industries, the Minister of Foreign Affairs and the Comptroller General. Said governing body will work hand in hand with the PPP Secretariat and an advisory committee will be formed which will be constituted by members of the private sector.
- In order for a project to be tendered under the PPP modality, preliminary studies must be carried out based on the six eligibility elements established in the law (social benefits, economic cost-benefit analysis, risk allocation, service indicators, feasibility studies, as well as environmental and legal aspects). The Contracting Public Entity must then prepare a technical report, subject to the opinion and observations of the National PPP Secretariat, which must be forwarded to the Governing Body, so that it may decide whether to approve the project for bidding.

### 4. PLATFORM FOR ADMINISTRATIVE CONTRACTING

The General Directorate of Public Procurement (DGCP) oversees managing the PanamaCompra Electronic System and has the power to regulate, interpret,

supervise, and advise on the contractor selection procedures carried out by state institutions.

The Bidders' Registry consists of the database administered by the General Directorate of Public Contracting (DGCP), in which natural or legal persons or consortiums or accidental associations, national or foreign, aspiring to participate in a contractor selection procedure and with whom a contract is signed, are registered. To become a supplier of the PanamaCompra System it is only required to complete the requested information. A single form will be adopted containing the indispensable requirements to be included by the interested parties, complying with the following requirements;



#### 4.1 Registration Requirements for Foreigners in the Bidder's Registry

Legal Entity	Natural Person
Physical and postal address, active email, telephone, and fax.	Physical and postal address, active email, telephone, and fax.
Unique Taxpayer Registration Number (RU)	Unique Taxpayer Registration Number (RU)
Paz y Salvo from the Ministry of Economy and Bond: foreigners not registered in Panama must request it at the offices of the General Revenue Directorate (DGI).	Paz y Salvo from the Ministry of Economy and Bond: foreigners not registered in Panama must request it at the offices of the General Revenue Directorate (DGI).
Certification of the Social Security Fund: foreigners not registered in Panama must apply for it at the offices in Clayton 520).	Certification of the Social Security Fund: foreigners not registered in Panama must apply for it at the offices in Clayton 520).
Notice of operations issued by the Ministry of Commerce and Industries.	Copy of ID
Certificate of suitability issued by the Technical Board of Engineering and Architecture.	Notice of Operations issued by the Ministry of Commerce and Industries
Simple copy of the Articles of Incorporation and its amendments.	Certificate of suitability issued by the Technical Board of Engineering and Architecture (In case of participation in public works contracts)
Be affiliated to the electronic bank transfer (ACH) payment system of the Ministry of Economy and Finance.	Certificate of suitability issued by the Technical Board of Engineering and Architecture (In case of participation in public works contracts.

The Electronic Public Procurement System (PanamaCompra<sup>20</sup>). It is a tool that will only be used to select the contractor to supply goods, works and/or services for all State entities, the bidding supplier must be registered in the aforementioned Electronic System of Public Procurement.

#### 5. UPCOMING OPPORTUNITIES

The platform for viewing upcoming opportunities will be visible on the aforementioned Panama purchasing platform (PanamaCompra) and the way to register and log in is described above. This should display the awarded and available tenders.

#### Future administrative contracting plan

As indicated above, to have access to future contracting with the Republic of Panama, the Government of Panama's procurement plans are presented on an

annual basis and can be found on the Government of Panama's website .

The General Directorate of Public Contracting, that all public entities, as well as corporations, associations, non-governmental organizations, foundations and other entities that receive public funds and goods or that receive donations from the State, must publish on the first Monday of March, their Annual Procurement Plan for the current fiscal period. (The fiscal year of the Republic of Panama is equal to the calendar year, that is, it ends on December 31).

#### 6. ACCOUNTABILITY, INTEGRITY AND TRANSPARENCY OF PUBLIC PROCUREMENT SYSTEMS

The annual procurement plan is a vital tool for compliance with the principle of transparency, which ensures that the actions of the authorities are public and the contractor selection processes are open to any interested party.



20. <http://www.panamacompra.gob.pa/Proveedor/CreacionProveedor.aspx>



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