Public Procurement World - Chile

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# 1. The Laws

## a. What is the applicable legislation?

In Chile, all public contracts, without exception, are ruled by the Chilean Constitution and by a core of legal provisions that rule the activity of administrative agencies: the Law of General Bases of Administrative Procedures governing the acts of the organs of the State Administration (Law No. 19,880); the Constitutional Organic Law of General Bases of the State Administration (Law No. 18,575); Administrative Statute Law (Act No. 18,834); the Law on Access to Public Information (Law No. 20,285); the Law governing the Lobby and efforts representing particular interests before the authorities and officials (Law No. 20,730); and their respective regulations.

The special legal framework on public procurement consists of the Law of Bases of Administrative Contracts for supply and services, No. 19.886 (the Chilean Public Procurement Law, "PPL") and its regulation (Supreme Decree No. 250 of 2004, the Ministry of Finance; "PPL Regulation").

Other legal frameworks that rule certain kinds of public procurement are the ones formed by the Law of Public Works Concessions (Decree with Force of Law No. 164 of 1991, of the Ministry of Public Works; "Public Works Concessions Law"), and its regulation (Supreme Decree No. 75 of 2004, of the Ministry of Public Works), which rules public works concession contracts; the Constitutional Organic Law of Municipalities (Law No. 18,695), which rules contracts for municipal services concessions; etc.

In addition, there are several special legislations that rule certain kinds of contracts celebrated by State bodies that are not part of the Administration.

## b. Does the legislation relate to or interact with any applicable trade agreement, such as the European Union procurement rules, WTO Government Procurement Agreement (GPA) or the procurement requirements of the North American Free Trade Agreement (“NAFTA”)?

No.

Some of the Free Trade Agreements concluded by Chile contain provisions referred to public procurement. However, those provisions do not modify the rules set forth in local legislation. Chile is not a member of WTO Government Procurement Agreement, nor EU nor NAFTA.

## c. What are the basic underlying principles of the legal framework?

The PPL establishes a set of principles to be observed in public procurement ruled by it, principles that govern, with slight differences, all other kinds of public procurement: the principle of equality of the bidders (all bidders shall receive the same treatment, avoiding particular privileges); the free competition of bidders for the tender (the Administration must guarantee that all bidders have free access to the tender); legality and strict subjection to the tender terms (the applicable Law and tender's terms are binding to the Administration and the bidders); the prohibition of unfair enrichment (ban of any increase of the patrimony of the State at the expense of a bidder, and vice versa); and the principle of transparency and publicity (tender processes must be public and must have guarantees for transparency). In addition, Administration should always strive to ensure effectiveness, efficiency and austerity in their procurement processes (PPL, Art. 6, paragraph three).

## d. Is aerospace and defense procurement treated differently from other types of procurement?

As a general rule, the PPL is also applicable on procurement for the Armed and Security Forces (Chilean Army, Navy, Air Force, Police Corps and the Bureau of Police Investigation).

Besides, supplementary provisions regarding the procedure of procurement for Armed and Security Forces can be found on the Law 18,928 of 1990.

Nevertheless, the PPL is not applicable to defense procurement when it comes to war material, purchasing of vehicles for military or police use (excluding vans, cars and buses), equipment and information systems of advanced technology (used exclusively for systems of command, control, communications, computational and intelligence); elements or parts for the manufacture, integration, maintenance, repair, improvement or armament of armaments, their spare parts, fuels and lubricants -PPL, art. 3 letter f)-**.** Other legislative bodies are applicable to such cases (Law No. 17,174, Law No. 18,476, among others).

The PPL is neither applicable on the procurement of goods and services that are needed to prevent exceptional risks to the national security or public safety. This exceptional situation shall be authorised by the Ministry of Defense -PPL, Art. 3 letter f)-.

# 2. Application of the Statutory Procurement Laws

## a. Which public agencies are covered by the laws?

PPL applies to all contracts entered into by organs of the State Administration with privates against payment, for the supply of movable goods and services required for the performance of its functions. For these purposes, shall be considered as members of the State Administration, the following state bodies: the President of the Republic, Ministries, Intendants, the Governorates and public bodies and services created to fulfil administrative functions, including the Comptroller General of the Republic, the Central Bank, the Armed Forces and the Forces of Order and Public Security, the Regional Governments and Municipalities (PPL, Art. 1).

## b. Which private entities are covered by the laws?

All private entities who enter in procurement procedures shall fulfil the requirements set forth in the legal framework applicable (*see* answer 4.a).

## c. Are co-operations between contracting authorities exempted from public procurement law? If so, what are the conditions for the exemption?

The PPL excludes from its scope of application the agreements between public bodies -PPL, Art. 3, letter b)-.

## d. Which types of contracts are covered?

The PPL covers the contracts concluded by the State Administration bodies for pecuniary interest, in order to acquire the supply of movable property (a "supply contract"), or to hire a service required for the performance of their function (PPL, art. 1).

According to the PPL, a supply contract is one which is intended for the purchase or lease or goods, even with purchase option (PPL, art. 2).

## e. How are changes to an existing contract dealt with? Do changes require a new procurement procedure?

Contracts can be amended or even terminated upon one of the following conditions: (i) mutual agreement between the public entity and the contractor; (ii) serious breach of obligations caused by the contractor; (iii) contractor's notorious insolvency, unless the guarantees provided by the contractor are sufficient or improved; (iv) under public interest or national security reasons; (v) other circumstances laid down in the tender conditions (PPL, Art. 13); and (vi) if the contractor has outstanding remuneration payments or social security contributions with its current workers or with workers hired within the past two years (PPL Regulation, Art. 77, No. 5).

As for conditions (i) and (v), the possibility of modifying the contract must be foreseen in the tender conditions, in order to respect the principle of strict subjection to the tender conditions and equality of the bidders. Additionally, the price of the contract can be increased beyond 30% of the amount originally agreed in the tender conditions (PPL Regulation, Art. 77).

## f. What is the applicable regime for framework agreements?

In Chile, framework agreements ("*convenios marco*") are procurement agreements carried out by the Directorate of Public Procurement to supply goods and/or services to public entities, within the conditions established in said agreement -PPL, Art. 30, letter d)-. Framework agreements are ruled by PPL and its Regulation.

If a public entity bound to PPL intends to buy a kind of good offered under a existing framework agreement, it is compelled to buy it from the contractor awarded with the said agreement, unless the agency obtains more favorable conditions through direct procurement -PPL, Art. 30, letter d)-. More favorable conditions should be objective, demonstrable and substantial, such as deadline, delivery conditions, guarantees, quality of goods and services, or a best cost-benefit ratio (PPL Regulation, Art. 15). When a public entity finds more favorable conditions, it must report them to the Directorate of Public Procurement, and submit the backgrounds that support such understanding of the agency.

Municipalities and Defense and Security agencies are not compelled to enter into framework agreements.

In order to execute a purchase under a framework agreement, the agencies should only issue a purchase order directly against the contractor.

Usually, goods object of framework agreement might be supplied by different contractors, among which agencies are authorized to choose.

## g. What is the applicable regime for public-private partnerships (PPPs)?

In Chile, public-private partnership and consortiums are not organically or specifically regulated by any law.

However, both figures are ruled by certain laws in specific aspects. Relevant examples are the following: Law on Concessions of Public Works and the Constitutional Organic Law of Municipalities; the Sports Law (Law No. 19,712), which regulates the concessions of sports facilities; the Shared Urban Financing Law (Law No. 19,865); the General Electrical Services Law (Decree-Law No. 1 of 1982); the Gas Services Law (Decree-Law No. 323 of 1931); the General Law of Sanitation Services (Decree-Law No. 382 of 1988); and the Law on Acquisition and Disposal of tangible and intangible goods, furniture and services, of the Armed Forces (Law No. 18,928).

## h. How are concessions dealt with?

As stated above, the legal regime of concessions is separated from the scope of the PPL and governed by multiple specific legislative bodies.

## i. Are there anti-avoidance rules (including laws on bid rigging)?

No. General rules apply. On this regard, the Chilean Antitrust Law establishes that bid-rigging must be considered an act against free competition -Decree Law No. 211 of 1974, Art. 3 letter a)-. In 2009, the Directorate of Public Procurement issued a special guide for preventing collusion between bidders[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1), instructing that public bodies that acknowledge any activity that may fall into collusion or bid-rigging, should denounce it before the National Economic Prosecutor (agency in charge of free competition infringements investigations).

In addition, the Comptroller General of the Republic could declare the illegality of certain acts related to a contract, because of their lack of compliance with the requirements of the PPL.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Directive to prevent collusion between bidders (January 29, 2015). Available in: <http://www.chilecompra.cl/wp-content/uploads/2016/11/directiva-n11.pdf>

# 3. Procurement Procedures

## a. What procurement procedures can be followed?

Contracts governed by the PPL can be awarded by framework agreements, public tender, private tender or via direct contracting (PPL, art. 7).

For **Framework Agreements**, see answer 2.f., above. **Public tender** is an administrative procedure by which the Administration makes a public call for the submission of bids, with subjection to the tender terms set by the contracting-administrative-agency. This public tender is the default and mandatory proceeding for awarding contracts with a price higher than 1,000 UTM (USD 67,000 approx.). Through **private tender**, the Administration invites certain persons to submit bids, subject to the tender terms. **Direct contracting** is an exceptional procedure, by which the Administration directly enters into a contract with a natural or legal person.

Private tender and direct contracting are exceptional and only applicable in the following circumstances (PPL, Art. 8):

When there are no bidders for a public tender. In this case, the Administration shall first call for a private tender; only if there are no bidders for the private tender it may directly contract with certain private bidders.

When the contract refers to the execution or termination of the pending or unfulfilled object of a contract that is early terminated, and the remaining amount of it does not exceed 1,000 UTM (USD 67,000 approx.).

In emergencies, unexpected or urgent cases, duly qualified by the chief or superior of the contracting agency.

When there is only one supplier for the goods or services required.

When the Administration contracts with foreign companies if the services are going to be executed outside Chile.

When it comes to confidential services, and such confidentiality is enacted by Supreme Decree of the President of the Republic.

When the amount of the contract is lower than the limit set by the PPL Regulation (10 UTM, equivalent to USD 670 approx.).

Additionally, when direct contracting is imperative due to the matter or nature of the contract, according to the criteria set in the PPL Regulation (PPL, Art. 10, No. 7).

## b. What status do electronic means/procedures have?

It is mandatory for all public bodies governed by the PPL to only use the electronic systems established by the National Directorate of Public Procurement, when quoting, bidding, contracting, awarding, requesting clearance and developing all its procurement procedures. Said public bodies cannot award contracts for which tenders have not been received via electronic systems other than the established by the National Directorate of Public Procurement and Contracting**.** However, a complementary regulation to the PPL can determine the cases in which it is possible to develop contract procedures without using such systems (PPL, Article 18).

Public bodies not governed by the PPL (with the sole exception of State companies established by law) shall be subject to the rules of electronic means set forth in the PPL in order to provide basic information on procurement (PPL, Article 21).

## c. Where are contract notices, i.e. calls for bid, published?

*Mercado Público* is the official website for public procurement procedures. In this site, calls for tenders are published and bids can be submitted. This site is available at [www.mercadopublico.cl](http://www.mercadopublico.cl/).

## c. Can certain prospective bidders be excluded from the competition?

A prospective bidder may be excluded from the competition if it does not fulfil the requirements set forth in the PPL and mentioned above (see answer 4.A.). Also, if it does not comply with tender requirement, it might be declared "out of the tender" ("fuera de bases").

# 4. Bidder Selection

## a. Are there any rules on the selection criteria?

According to the PPL, the requirements for participating in a tender for contracting with the Administration are:

To be a natural or legal person (whether Chilean or foreign);

To demonstrate a financial situation and technical expertise as provided in the Regulation;

To comply with other requirements stipulated in the Regulation and General Rules of Chilean Law (e.g., to have legal capacity to conclude the corresponding contract);

Not have been convicted for anti-union practices or violation of constitutional rights of workers, or bankruptcy offenses under the Criminal Code (e.g., concealment of goods, acts or contracts that reduce assets or increase their liabilities without economic justification, providing false backgrounds to the trustee or insolvency liquidator; see paragraph 7 of Title IX of Book II of the Criminal Code) within two years prior to the bid submission, the submission of the proposal or the subscription of the convention, depending on the awarding procedure of the case (public, private or direct contracting procurement); and,

Not being executive officer of the contracting public body or enterprise, nor a person (natural or legal) related to the said official (see paragraphs sixth and final of Art. 4, PPL).

If the winner of the tender subcontracts a third party for providing the services or supplying the goods to the Administration, the subcontractor must meet the same requirements.

After the tender award, and prior to signing the contract, the contracting public agency may require from the contractor its registration in the Registry of contractors and suppliers, in charge of the National Directorate of Public Procurement. All natural or legal Chilean or foreign persons who wish to contract with the Chilean Administration, which are not subject to a ground of inability to contract with state agencies (PPL, Art. 16), are allowed to be registered. In addition to those mentioned in the first paragraph of this response, the PPL Regulation (Art. 92) adds the following grounds for disqualification from the Suppliers Registry: (1) conviction for bribery; (2) tax liabilities higher than 500 UTM (USD 33,500, approx.) for more than one year, or over 200 UTM (USD 13,400 approx.) for more than two years, without existing any payment agreement; (3) pension or health record debts of more than 12 months; (4) submission of documents before the Suppliers Registry, declared false by judicial award; (5) to be declared in bankruptcy by enforceable judicial decision; or (6) have been removed or suspended from the Suppliers Registry by founded resolution of the Public Procurement Directorate (PPL Regulation, art. 92). This register is public. Registration in it is not automatic: it must be approved by the Directorate of Public Procurement.

## b. Is prequalification an option? If so, what are the requirements? What is the procedure?

A prequalification phase is not mandatory. Nevertheless, the PPL Regulation enabled the contracting entities to establish said prequalification phase in the tender terms (PPL Regulation, Art. 34).

Additionally, if set forth in the tender terms, the public entity may divide the tender procedure in two stages: a technical qualification phase followed by an economic qualification of the bids (PPL Regulation, Art. 34).

## d. Do “blacklists” for bidders exist? If so, what are the conditions for unlisting?

Yes. Legal inabilities to contract with the State Administration are (1) being convicted for anti-union practices or violation of constitutional rights of workers, or (2) bankruptcy offences under the Criminal Code (e.g., concealment of goods), both within two years prior to the bid submission, the submission of the proposal or the subscription of the convention (PPL, Art. 4). Once the said inabilities end, the affected could request its incorporation in the Suppliers Registry, before the Directorate of Public Procurement.

Additionally, the Directorate of Public Procurement keeps a record regarding the contractual performance of the bidders in public procurement procedures (PPL Regulation, Art. 96 bis).

## e. Does the involvement of a company in the set-up of a procurement procedure exclude the company from said procedure due to conflict of interest?

The PPL Regulation established that the contracting agency may perform "market consultations" when drafting the tender terms; that is, formal procedures of consulting with suppliers, through open and public calls, in order to retrieve information about the characteristics of the services required, time of preparation of the bids and any other information needed for drafting the terms (PPL Regulation, Art. 13 bis).

As a general rule, companies that have aided the contracting agency in the elaboration of the contractual and technical terms of the contract are allowed to participate in the corresponding public tender. Nevertheless, special attention must be paid to the rules concerning bid-rigging (see answer 2.i).

Besides, the participation of privates in the elaboration of the tender terms must be subject to the Chilean Lobby Law (No. 20,730), according to which all efforts or negotiations conducted to influence policies, plans or programs in discussion or execution, must be annotated in a public register, with the sole exception of those covered by national security or national interest reasons.

## f. Can bidders combine to submit a bid (bidder consortia)? What limitations apply?

Bidder consortia are allowed by the PPL under the name of 'temporary union of suppliers'[[1]](https://resourcehub.bakermckenzie.com/en#_ftn2). This consists on an union of natural and/or legal persons, for the submission of an offer -in the case of tenders-, or for signing a contract -in the case of direct contracting- (PPL Regulation, Art. 2, No. 37).

When formalizing the consortium agreement, the PPL Regulation compels all bidders to declare that they are all jointly and severally liable; and to appoint a joint representative. Despite the consortium can determine which background documents they will submit to be considered in the respective bid evaluation, this cannot be intended to hide relevant information that may affect a member of the consortium (PPL Regulation, Art. 67 bis).

A legal inability over one of the members of the consortium does not affect the other members. In case a member is disqualified under a legal provision, is up to the rest of the members of the Consortium to decide whether to continue or to withdraw from the tender procedure (PPL Regulation, Art. 67 bis).

In the case of contracts in the amount of 1,000 UTM (USD 67,000 approx.) or higher, the agreement stating the consortium should be materialized by deed.

The time scope of a consortium may not be inferior to that of the contract awarded (PPL Regulation, Art. 67 bis).

Special attention must be paid to the rules concerning bid-rigging (see answer 2.i).

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref2) In Spanish, known as 'Unión Temporal de Proveedores'.

## g. Can members of a bidder consortium be changed during a procurement procedure?

Neither the PPL nor its Regulation rule this issue. Nevertheless, the Directorate of Public Procurement has issued a special guidance[[1]](https://resourcehub.bakermckenzie.com/en#_ftn3) regarding this topic. In this guidance, the Directorate has laid down that despite the tender conditions cannot impede a member from withdrawing from its consortium, it is improper for the consortium to replace such member with another, even if it has equal or better characteristics than the old member. Hence, the consortium shall continue with its remaining members.

The Directorate also stated that if during the execution of a contract the consortium is left with less than two members, the contract will be terminated in advance.

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Directive on Temporary Union of Suppliers (December 1, 2015). Available in: <http://www.chilecompra.cl/wp-content/uploads/2016/11/directiva-n22.pdf>

## h. Do limitations apply for participation of related bidders in the same procurement procedure with competitive bids?

Neither the PPL nor its Regulation rule this issue. According to general applicable rules, there should not be limitations.

## i. Is there a special regulation or a special requirement for a foreign company to participate in a procurement procedure?

There are few regulations in the PPL and its Regulation concerning foreign companies. As a general rule, the State can contract both with foreign and local companies (PPL, Art. 4). However, some rules must be adequately taken into consideration when entering into a procurement procedure with a foreign company. Among others, the following:

The PPL Regulation authorises foreign companies to submit bids written on paper, when it appears as essential to carry out the procedure by tangible means, in light of special idiomatic, economic, cultural or legal differences (PPL Regulation, Art. 62, No. 2).

The tendering agency may establish as a requisite for awarding a contract, the obligation to constitute a company of Chilean nationality or an agency of the foreign company.

Both local and foreign companies who want to be incorporated in the Suppliers Registry must render documents demonstrating their "legal existence" (PPL Regulation, Art. 91), and the validity of the powers of the legal entity (PPL Regulation, Art. 94).

The PPL does not establish a special way of demonstrating the legal existence nor the validity of the powers of foreign companies. Therefore, this accreditation must comply with the general rules of Corporate Law and Private International Law. Foreign legal persons can prove their legal existence by certificates of validity of the company or by an authorized copy of the Articles of Association or Articles of Incorporation, issued under the law of the place where they are domiciled and authenticated by the competent authority of the country of origin as well as by Chilean authorities. They can act through their legal representatives designated in its statutes, treaties or regulations, as long as said document is legalized in Chile. Please note that from 2016, the Apostille Convention of The Hague is into full effect.

Regarding the language of the documents, the contracting-public-agency may require, within the tender terms, a free or official translation.

# 5. Specifications

## a. Are there any rules on the specifications?

According to the PPL, the cornerstone for making tender specifications is setting the most favorable combination of conditions for the administration (mainly, cost-benefit). As for contractors, the tender specifications shall not affect the principle of equal treatment that the public entities must give to all bidders, nor may they establish arbitrary differences between them. Besides, tender conditions must provide maximum information to contractors, contemplate reasonable timing for all stages of the tender and to avoid making merely bureaucratic demands -such as requiring, at the time of the submission of tenders, administrative documents, or antecedents that may be found in the Register of Suppliers, in the case of registered bidders- (PPL Regulation, Article 20).

## b. Are bidders allowed to change the specifications or submit their own standard terms of business?

Public procurement procedures are governed by the principle of strict subjection to the tender conditions, by which neither the public entities nor the private bidders can deviate from said conditions. Bidders are not allowed to change specifications or to submit their own standards, but in the exceptional case of direct contracts.

Furthermore, the PPL Regulation does not allow any contact between the public entity and the bidders during the tender, other than the possibility to make questions (PPL Regulation, article 27).

## c. Is the protection of Small and Medium Enterprises addressed in procurement legislation? If so, how?

No.

# 6. Contract Award

## a. Are there any rules on the award of contracts?

The criteria for awarding a contract are mainly technical and economic. The specific factors to be evaluated with respect to these criteria must be established in the tender terms. Tender terms shall also contemplate the ponderation of the said factors and the mechanisms for assigning scores in each case (PPL Regulation, Art. 38).

According to PPL Regulation, the following can be considered as technical or economic criteria for awarding a contract in the corresponding tender terms: price, experience of the contractor, methodology, technical quality, technical assistance or support, services after sales, delivery terms, surcharges for freight, energy efficiency, the existence of a bidders' consortium, the previous contractual behavior of the bidder, compliance with the formal requirements of the offer, as well as any other reasonable element according to the characteristics of the goods or services to which the tendered contract is referred, and the requirements of the procuring-administrative-agency.

In the case of regular/usual provision of services, the tender terms must consider as a criterion the conditions of employment and remuneration of the company's employees. The following could be considered as factors for evaluating this criterion: the state of payment of salaries and employee contributions, hiring disabled persons, the level of remunerations higher than the minimum wage, composition and adjustment of wages, the extension and flexibility of the workday, the duration of contracts, and the existence of incentives, among others (PPL Regulation, Art. 38).

## b. Are there any limitations regarding the offered bid price?

The PPL Regulation establishes that although price is a criterion for evaluating the bids submitted (PPL Regulation, Article 38), the tendering agency should not only pay attention to price but to all the benefit or costs involved, in accordance to the evaluation criteria set forth in the tender terms.

There is no provision in the PPL nor in its Regulation concerning abnormally low bids. However, the application of civil law principles allow to conclude that ludicrous low prices are generally considered to be against good faith.

## c. Are there any rules on alternative bids?

No.

# 7. Exemptions to Competitive Bidding

## a. Are there any exemptions to competitive bidding, i.e. under what conditions is a direct award/single sourcing permissible?

Although competitive bidding is the default rule, direct contracting is permissible under exceptional situations (see answer 3.a., above).

## b. What are the consequences for violation of the competitive bidding requirement?

Procurement procedures and contracts concluded without following the requisites set forth in the PPL, the PPL Regulation and other applicable legal bodies, are null and void. Depending on the wrongfulness of the tender, it may even amount to administrative and even criminal sanctions, and civil liability (torts).

# 8. Remedies and Enforcement

## a. Are there any remedies and enforcement mechanisms in the procurement legislation?

All acts or omissions that are illegal or arbitrary, taking place between the approval/issuing of the tender terms, and the award of the tender, both included, can be challenged before the agency itself, and also before courts. PPL established a specific procedure for doing so: a challenge to be brought before the Public Procurement Court.

## b. Are remedies available outside the scope of procurement legislation, e.g. civil law damage claims?

Yes. It is also possible to file the general remedies of Administrative Law: a remedy for the protection of constitutional rights (a kind of administrative contentious court action); administrative claims for review of an act considered illegal, before the administrative body responsible for controlling the legality of administrative activity of the State in Chile (Comptroller General of the Republic); and administrative remedies of Law No. 19,880 (mainly the replacement and hierarchical appeals, to be filed before and decided by the contracting-authority itself).

Additionally, civil actions seeking compensation for damages can be also filed before civil courts.

## c. Is there a specific forum before which procurement disputes are heard?

The PPL created the Public Procurement Court. The court is composed of three judges. This Court shall decide on the challenges filed in accordance with PPL proceeding against illegal or arbitrary acts or omissions of the contracting administrative agencies, occurring within the administrative procedures for contracting with public bodies governed by the PPL.

Any controversies referred to stages subsequent to the contracting (for instance, the execution of the contract), are subject to the ordinary courts' proceedings.

In addition, in any of the stages of contracting, it is possible to claim the illegal nature of actions by the Administration before the Comptroller General of the Republic, an autonomous bureau that controls legality of administrative actions.

## d. Are there any timing requirements for the review?

As for claims before the Public Procurement Court, the lawsuit shall be filed within 10 business days (considering Monday to Saturday, with the exception of holidays and Sundays) from the moment in which the person affected has taken knowledge the act or omission that is challenged or since the publication of the decision (PPL, Art. 24).

## e. What are the main preconditions for review?

First, it is necessary to file a lawsuit by writ, signed by a lawyer. The PPL mandates that the lawsuit must comply with the following requirements:

It must be submitted on behalf of any natural or juristic person as long as they have an interest currently engaged in the procurement procedure.

It must be filed within the fatal term of 10 business days (considering Monday to Saturday, with the exception of holidays and Sundays) since the time the subject has known of the act or omission to be challenged, or since the publication of the challenged decision.

It must be brought before the Public Procurement Court. In case that the address of the applicant is outside the Public Procurement Court's jurisdictional boundaries (Santiago), it must be submitted before the Regional Governor (*Intendente*) or the Provincial Governor (*Gobernador*), to be later sent to the court by these authorities.

It must mention all the facts constituting the unlawful or arbitrary act or omission.

It must identify all legal rules and regulations on which the challenge relies, as well as the specific requests that are submitted to the attention of the Court.

If the writ does not comply with any of these requirements, it may be declared inadmissible. In that case, the Court will order the applicant to correct it within five business days (considering Monday to Saturday, with the exception of holidays and Sundays) from the notification of the inadmissibility (PPL, Art. 24).

## f. What are admissible grounds for starting a review proceeding?

According to PPL, the Public Procurement Court will settle all cases related to illegal or wrongful acts or omissions that arise between the approval of the conditions of the respective tender and its award, both inclusive (PPL, art. 24). According to stats published by the Public Procurement Court, most of the challenges are filed against the award of the contract (59%) and the decree that sets the tender terms and conditions (9%)[[1]](https://resourcehub.bakermckenzie.com/en#_ftn4).

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Available in: [http://www.tribunaldecontratacionpublica.cl/index.php?option=com\_content&view=article&id=11:las-impugnaciones-que-conoce-el-tribunal&catid=9&Itemid=101](http://www.tribunaldecontratacionpublica.cl/index.php?option=com_content&amp;view=article&amp;id=11:las-impugnaciones-que-conoce-el-tribunal&amp;catid=9&amp;Itemid=101)

## g. Does a review proceeding affect an ongoing procurement procedure or an awarded contract respectively?

Yes. According to the PPL, the Public Procurement Court may order the suspension of the administrative procedure which is been challenged (PPL, Art. 24), which may include a contract that is being awarded.

## h. What are the consequences of a successful review proceeding for the affected procurement procedure or awarded contract respectively?

If the challenge is successful, the Public Procurement Court will be empowered to order all measured needed to re-establish the rule of law (PPL, Art. 26). As it can be noted, the Court has a wide pool of options available to settle the case (e.g. an order to return the tender to a previous stage).

## i. How long does a judicial proceeding for review take?

The proceedings before the Public Procurement Court will normally last three months. It must be noted that the PPL enabled the losing part to institute proceedings against the ruling of the Public Procurement Court. This complaint will be settled by the Court of Appeals of Santiago on an express basis, and might last for almost two months more**.**

## j. Must unsuccessful bidders be notified before the award? If so, when?

No.

## k. Are review proceedings common?

Yes. Just in 2016 nearly 250 new review proceedings were instituted before the Public Procurement Court.

## l. Are damage claims in relation with procurement procedures common?

Although they are not common, actions seeking compensation for damages caused by unlawful procurement proceedings, are available, and sometimes filed. From 2006 onwards, at least 40 actions seeking for compensation have been filed before Chilean courts.

## m. What are the leading court decisions involving procurement disputes?

Most relevant doctrines established in Case Law re. public procurement, are as follows:

The tender entity cannot reorder the factors for evaluating the bids. Besides, price cannot be the exclusive criterion for awarding a contract[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1).

Both the administration and the bidders must respect the principle of strict subjections to the tender conditions. The tender entity cannot award a contract to a bidder offering characteristics other than those laid down in the tender conditions[[2]](https://resourcehub.bakermckenzie.com/en#_ftn2).

Folding and signing the documents is merely a formal requirement. Therefore, the tender entity did not incur in illegality by not excluding an bidder that did not submit all documents folded and signed[[3]](https://resourcehub.bakermckenzie.com/en#_ftn3).

It was not possible for a public entity to declare a bid 'abandoned' when there were bids that were declared admissible[[4]](https://resourcehub.bakermckenzie.com/en#_ftn4).

The Comptroller General of the Republic, being empowered to control the legality of the administrative acts, has addressed public procurement issues in several occasions. Some of this decisions are:

Inabilities to contract with the State can only be declared by law. Tender conditions cannot establish inabilities other than those declared by law[[5]](https://resourcehub.bakermckenzie.com/en#_ftn5).

When evaluating the bids received, it is not appropriate to perform an evaluation based solely on technical criteria. Hence, the public entity cannot prescind from the economic evaluation[[6]](https://resourcehub.bakermckenzie.com/en#_ftn6).

The tender conditions cannot state that certain aspects will be "considered positively" without specifying how this criterion will be objectively assessed[[7]](https://resourcehub.bakermckenzie.com/en#_ftn7).

'Previous experience' cannot be set as a requirement to participate in the tender, though it can be taken into account as an element in the evaluation of the bids[[8]](https://resourcehub.bakermckenzie.com/en#_ftn8).

Bidders cannot be excluded from the tender based upon non-essential errors, unless this error affects the rights of the State, the transparency of the proceeding or the principle of equality between bidders[[9]](https://resourcehub.bakermckenzie.com/en#_ftn9).

Administration must provide clear and complete information about the rules of competition, to prevent inequalities between bidders[[10]](https://resourcehub.bakermckenzie.com/en#_ftn10).

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Court of Appeals of Santiago, docket No. 5506-2007.

[[2]](https://resourcehub.bakermckenzie.com/en#_ftnref2) Court of Appeals of Santiago, docket No. 94-2009.

[[3]](https://resourcehub.bakermckenzie.com/en#_ftnref3) Public Procurement Court, docket No. 112-2012.

[[4]](https://resourcehub.bakermckenzie.com/en#_ftnref4) Public Procurement Court, docket No. 123-2012.

[[5]](https://resourcehub.bakermckenzie.com/en#_ftnref5) Comptroller-General of the Republic, Dictum No. 26,212 of 2009.

[[6]](https://resourcehub.bakermckenzie.com/en#_ftnref6) Comptroller-General of the Republic, Dictum No. 29,078 of 2008.

[[7]](https://resourcehub.bakermckenzie.com/en#_ftnref7) Comptroller-General of the Republic, Dictum No. 58,743 of 2008.

[[8]](https://resourcehub.bakermckenzie.com/en#_ftnref8) Comptroller-General of the Republic, Dictum No. 33,966 of 2008.

[[9]](https://resourcehub.bakermckenzie.com/en#_ftnref9) Comptroller-General of the Republic, Dictum No. 33,966 of 2014.

[[10]](https://resourcehub.bakermckenzie.com/en#_ftnref10) Comptroller-General of the Republic, Dictum No. 65,678 of 2014.

# 9. Other Relevant Rules of Law

## a. Are there any related bodies of law of relevance to procurement by public agencies?

As abovementioned (see answer 1.a), the PPL provisions must be complemented with the core administrative framework, which includes the law governing the acts of the public bodies, the statute for public officials, the regulations concerning public information and lobby, among others.

Even though PPL and its Regulation are the general legal framework applicable to all levels of government, there are special laws applicable to certain contracts concluded by certain levels of government. For example, concession contracts for public works that can only be celebrated by the Ministry of Public Works are ruled by Act of Public Works Concessions, and its regulation contained in Decree-Law No. 164 of 1991, of the Ministry of Public Works; concession contracts for municipal services (such as maintenance of parks and infrastructure for recreation, garbage collection, etc.), which can hold Municipalities, are ruled by Constitutional Organic Law on Municipalities, No. 18,695; among others (see answer 1.a).

## b. Does a specific contract law apply for public contracts?

As explained previously, the scope of the PPL is wide. In this regard, the PPL has regulated a vast quantity of contractual issues, such as obligation and rights, performance bonds and guarantees, application of penalties and even a litigation scheme (see all of our previous answers).

# 10. Industry sectors of special importance or with a specific procurement regime

## a. Are there any specific laws or practices that apply in the technology sector?

Although the legal framework applicable to the technology sector is the PPL, the Directorate of Public Procurement has issued a new Directive concerning information technologies (IT). This Directive is intended to set guidelines in the procurement of IT material, especially by establishing a criterion for the formulation of tender conditions[[1]](https://resourcehub.bakermckenzie.com/en#_ftn1).

[[1]](https://resourcehub.bakermckenzie.com/en#_ftnref1) Directive No. 24 of the Directorate of Public Procurement (issued December 1, 2015). Available in: <http://www.acti.cl/files/Instrucciones_para_la_Contratacion_de_Bienes_y_Servicios_Relacionados_con_Tecnologias_de_Informacion.pdf>

## b. Are there any specific laws or practices that apply in the defense sector?

Procurement in the defense sector (Chilean Army, Navy, Air Force, Police Corps and the Bureau of Police Investigation) is primarily governed by the PPL. However, as stated above, other complementary provisions for procurement procedures concerning Armed and Security Forces shall be taken into special consideration (such as Law 18,928 of 1990).

Nonetheless, the PPL is not applicable for the procurement or war material and other specific goods (purchasing of vehicles for military or police use other than vans, cars and buses, equipment and information systems of advanced technology; elements or parts for the manufacture, integration, maintenance, repair, improvement or armament of armaments, their spare parts, fuels and lubricants. Moreover, the The PPL is not applicable when buying goods needed to prevent exceptional risks to the national security or public safety (see answer 1.d).

## c. Are there any specific laws or practices that apply in the health care sector?

The PPL is the main regulation that governs the health care sector.

Given that local councils (municipalities) have an active role in the provision of health services, special attention must be paid to regulations concerning municipal concessions (see answer 1.a.)

## d. Are there any specific laws or practices that apply to any other particular industry sector?

The PPL rules the vast majority of contracts and industries. Specific regulations or guidelines concerning particular industry sectors (other than the aforementioned) can be dictated by the Directorate of Public Procurement.

# 11. Looking Ahead

## a. Are there any proposals to change the law in the future?

During the last five years, several legislative proposals to amend the PPL has been tabled before the Chilean congress. Among others, the following can be considered:

adopting measures to expedite public contracting for small and medium-sized businesses.

banning natural or juristic persons from contracting with the State, in the case said persons were convicted for antitrust offences.

prohibiting public contracting with people convicted for crimes against humanity.

avoiding State contracting with natural or juristic persons that are being criminally prosecuted.

ensuring that the companies covered by the PPL are fulfilling their labour obligations, by compelling said companies to submit a bank guarantee.

All of this proposals still continue to be discussed by the Chambers of the Congress.

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