Public Procurement World - Chile

1. The Laws

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# 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)-.

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