

## GOVERNMENT CONTRACTING

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The government contracting market is an interesting market for individuals or companies that wish to obtain contracts with the Costa Rican Government. For 2005, the budget for procuring non-personal goods and services is over 3.3 billion US dollars.

### Coverage

The government contracting system is currently regulated by Government Contracting Law No. 7494 of May 2, 1995 [*Ley de Contratación Administrativa – LCA*], which establishes the mandatory principles and procedures applicable to agencies of the executive, legislative, and judicial branches, as well as the Elections Board, Controller General of the Republic, Ombudsman, municipalities, self-governing institutions, non-governmental public entities, and public companies for purposes of contracting services. Likewise, when partially or fully funded by public resources, contracted services provided by individuals or legal entities are subject to the regulations established in the LCA.

### Exceptions

Pursuant to article 2 of the LCA, employer-employee relationships, public loans, and any other activities subject to special contracting regulations are excluded from such Law. Additionally, non-governmental public entities that are more than fifty percent (50%) funded by their own resources or union dues or contributions, and public companies whose majority of stockholders are private individuals rather than public sector agencies, are exempt from the provisions of the LCA.

### Government Contracting Principles

The LCA and rulings of the Constitutional Court establish a series of principles that are intended to regulate and guide government contracting procedures. Some of those principles are: a) Bidding must be open to maximize bidder participation; b) equal treatment for all potential bidders; c) the request for bid proposals must be openly publicized and full access given to the file, reports, resolutions, and, in general, any information related to the process; d) proceedings must be lawful and transparent, meaning that contractor selection procedures must be clearly, specifically, and concretely defined in advance; e) the Government shall be subject to established procedures to ensure bidders of the rule of law and the legal certainty of the process; f) compliance with formal bid procedures; g) the principle of balanced interests shall be upheld; h) the parties shall demonstrate good faith, which means that the actions of both the Government and bidders must reflect clear ethical standards; i) the Government is both entitled and empowered to amend the contracts; j) the Government is required to maintain the economic balance of the contract, either by compensating the joint contractor for any negative repercussions of its decisions, due to the effect of contractual amendments, reasons of the public interest, or any other general or specific reason that ultimately affects the initial

amount of the contract; k) government contracting activities must be subject to control and oversight.

### **On the Bidders**

According to the LCA, any interested party may participate in the various contracting procedures. Bids may be presented individually, jointly, or as a consortium, at the discretion of the parties.

Several bidders may also participate jointly when it is permissible under the terms and conditions of the bidding process, and when, given the nature of the good or service being provided, it is possible or in the public interest for various components of the bid to be provided by different entities. In those cases, the joint bidders shall accurately outline the components of the service for which they are individually responsible with respect to the overall proposal.

### **Representation**

Interested parties may participate directly or through a foreign company's representative. In the latter case, an indication must be made that the interested party is presenting a proposal through a representative.

Finally, bidders may participate through any form of representation recognized by civil law, such as full (unlimited or limited) power of attorney, specific full power of attorney (for a business, bid or contracting procedure), general power of attorney for day-to-day management functions, and special power of attorney (specific for each act). It is important to bear in mind that full and general powers of attorney must be granted through a notarized document and recorded at the Costa Rican Public Registry.

### **Determination of Procedures**

Determination of the appropriate procedure (in cases where a particular procedure is not prescribed by law) depends on the amount of the contract and the budget available to the contracting institution for procuring non-personal goods and services.

The LCA classifies institutions into categories (A through J) based on the available budget for procuring non-personal goods and services, and defines monetary limits for each category (which are adjusted annually by the Controller General of the Republic). Those categories and limits are then used to determine the appropriate contracting procedure, i.e. international public bid, public bid, bid by invitation, restricted bid, or direct contracting.

The following limits have been established for 2005:

The different contracting procedures essentially vary in terms of the method for requesting proposals, the term for receiving bids, and the required guarantees.

**Description of the various contracting procedures**

Category	Budget for procurement of goods and services	Contracting Procedure						Appeal		Contract Approval
		Public Bid	Bid by Invitation	Bid by Invitation	Restricted Bid	Restricted Bid	Direct Contracting	Appeal	Controller Authorization	Internal Approval
		Greater than or equal to	Less than	Greater than or equal to	Less than	Greater than or equal to	Less than	Starting at	Starting at	Less than
A	Greater than 37,300,000,000	204,000,000	204,000,000	90,500,000	90,500,000	28,300,000	28,300,000	102,000,000	77,000,000	77,000,000
B	37,300,000,000 to 24,900,000,000	193,000,000	193,000,000	29,000,000	29,000,000	9,660,000	9,660,000	78,200,000	69,000,000	69,000,000
C	24,900,000,000 to 12,400,000,000	135,000,000	135,000,000	19,300,000	19,300,000	8,690,000	8,690,000	54,100,000	47,000,000	47,000,000
D	12,400,000,000 to 6,220,000,000	96,600,000	96,600,000	15,500,000	15,500,000	7,730,000	7,730,000	39,800,000	34,000,000	34,000,000
E	6,220,000,000 to 1,240,000,000	67,600,000	67,600,000	13,500,000	13,500,000	6,760,000	6,760,000	29,800,000	30,000,000	30,000,000
F	1,240,000,000 to 622,000,000	58,000,000	58,000,000	11,600,000	11,600,000	5,800,000	5,800,000	25,500,000	26,000,000	26,000,000
G	622,000,000 to 373,000,000	38,600,000	38,600,000	7,730,000	7,730,000	4,830,000	4,830,000	17,000,000	18,000,000	18,000,000
H	373,000,000 to 124,000,000	29,000,000	29,000,000	5,800,000	5,800,000	2,900,000	2,900,000	12,800,000	14,000,000	14,000,000
I	124,000,000 to 37,300,000	19,300,000	19,300,000	3,860,000	3,860,000	1,930,000	1,930,000	8,500,000	9,000,000	9,000,000
J	37,300,000 or less	9,660,000	9,660,000	1,930,000	1,930,000	1,000,000	1,000,000	4,250,000	5,000,000	5,000,000

	<b>Bid Submittal</b>	<b>Bid Analysis</b>	<b>Omission corrections</b>	<b>Award</b>
<b>Public Bid</b>	<p><b>25 business days</b> for construction proposals or works concessions</p> <p><b>20 business days</b> for proposals to supply imported goods or goods to be imported,</p> <p><b>10 business days</b> for all other business.</p>	<b>5 business days</b> from the date of opening	At least three business days are then granted to any bidders that need to correct errors or supply relevant information or documentation that has been omitted.	Once the bid has been analyzed and evaluated, the contract is awarded within the term stated in the terms and conditions. If no such indication is made, the contract shall be awarded within 20 business days from the date the bids were opened.
<b>International Public Bid</b>	Same as Public Tender	Same as Public Tender	Same as Public Tender	Same as Public Tender
<b>Bid by Invitation</b>	<b>Ten business days</b>	Same as Public Tender	Same as Public Tender	The contract is awarded within the term stated in the terms and conditions. If no such indication is made, the contract shall be awarded within <b>15 business days</b> from the date the bids were opened.
<b>Restricted Bid</b>	<b>3 business days.</b>	Same as Public Tender	Same as Public Tender	The contract is awarded within the term stated in the terms and conditions. If no such indication is made, the contract shall be awarded within <b>5 to 10 business days</b> from the date the bids were opened.
<b>Auction</b>	There must be at least <b>ten business days</b> between the date of publication of the auction notice and the date of the auction.	-	-	The asset is awarded to the highest bidder.  The interested party shall have <b>three business days</b> to settle the outstanding balance.
<b>Direct Contracting</b>	Stated in the contract terms	Stated in the contract terms	Stated in the contract terms	Stated in the contract terms

The LCA essentially provides for three types of appeals, including objections against the terms and conditions of the bid process with the intent of eliminating any restrictions on participation, and appeals against the award to cancel the contract.

### Objections

Objections may be filed by any potential bidder or representative who claims procedural errors, a violation of the fundamental principles of the contracting process, or a violation of applicable laws.

### Appeals

Appeals are filed to challenge the contract award and are appropriate, as stipulated in the LCA, based on the budget for procuring non-personal goods and services, and according to the estimated amount of the transaction (see "Contracting Limits" table).

### Motion for Reconsideration

When an appeal is not permissible due to the amount of the contract, the parties may file for reconsideration of the award through a motion for reconsideration by the same entity that issued the award.

### Terms

	<b>Presented</b>	<b>Notification</b>	<b>Resolved</b>
<b>Objections</b>	During the first third of the term of the term for bid submittal.	Audience to the Government for <b>3 days</b> to address the appeal.	<b>10 days</b>
<b>Appeals</b>	<b>10 business days</b> from publication or notification of the award	Within the first <b>10 business days</b> of filing, the Comptroller General of the State shall determine whether to admit or reject the appeal. If accepted, a court order is issued to open the case file, and the Government and successful bidder are given for a term of <b>5 days</b> to address the case. A final hearing will be held for <b>3 days</b>	Appeals must be resolved within <b>30 business days</b> from the date of the court order to open the case. Such term may be extended by <b>15 business days</b> , if necessary
<b>Motion for Reconsideration</b>	Within <b>5 business days</b> after notification of the award notification	Notify the successful bidder no later than <b>48 hours</b> from the time the motion was filed. The successful bidder then has a period of <b>3 business days</b> to make a statement on the matter.	The Government must reach a decision within <b>15 business days</b>

The decision handed down by the Government (appeal, motion for reconsideration) concludes the process of recourse through official channels. However, within **3 days** from notification thereof, the interested party may challenge the final decision (without overturning it) before the Superior Court of Administrative Litigation. This may be done through special proceedings regulated by articles 89 and 90 of the Law Regulating the Administrative Litigation Jurisdiction.

### **On Contracts**

Under Costa Rican law, contracts are legitimate when the award is final and the performance bond is paid (if required). Accordingly, the execution of the contract merely represents formalization of a contract that is already considered to be legitimate.

For contracts to be effective (executable), they must (if warranted, given the amount) be approved by the Comptroller General of the State, or receive the internal approval of the Government, as the case may be. The only contracts that are exempt are those for small monetary amounts, as indicated in the "Contracting Limits" table.