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CHANGES OF THE REGULATION OF PUBLIC PROCUREMENT

On January 21st, 2020, Supreme Decree N° 821 of the Ministry of Finance was officially published, amending Supreme Decree N° 250, which contemplates the Regulation of Law N° 19.886 about Public Procurement (the "Regulation").

Objectives

The incorporated modifications are framed within the strategic objectives set by the Ministry of Finance to improve efficiency in state management, optimizing contracting goods and services processes, through a public procurement platform governed by Law No. 19,886.

Modifications

To achieve the previously mentioned objectives, the possibility of direct negotiation and contracting by the public entities subject to the system, is now more flexible and includes two new contracting modalities: the "Quick Purchase" and the "Coordinated Purchase". Specifically, the modifications on the Regulation are:

1. The need for public entities to draw up Terms of Reference, which were aimed to regulate the way in which each public entity carried out the direct negotiation and contracting processes, are eliminated.
2. A new purchase modality named " **Quick Purchase** " is incorporated, through which public entities may use the Public Market platform to acquire goods and services for an amount less than or equal to UTM 30 (USD 1,900 approximately). This new modality has the advantage that it will not require the entity to invoke one of the causals required for direct contracting, requiring just the emission and acceptation of the purchase order. The "Quick Purchase" will require a public entity to be provided with a minimum of three price quotation, except for cases already contemplated in the rule[1] .In case of an existing Framework Agreement for such good or service, the Quick Purchase will proceed only if through its use the public entity may obtain a lower price, which has to be documented by the public entity.

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

Finally, it is noted that the Quick Purchase allows public entities to pay in advance for the goods and services, maintaining the right of withdrawal and other consumer's rights and duties, according to Law No. 19,496 on Consumer Rights.
3. It also includes the " **Coordinated Purchase** " modality, were two or more public entities may add demand through a competitive procedure, in order to achieve savings and reduce transaction costs. The regulation does not specify how this modality should operate, but it does establish that the Public Procurement Department will dictate the required regulations.
4. Public entities are allowed to receive the price and service quotations from the suppliers directly through emails, web pages, electronic catalogs, internet price, purchasers' lists or other similar ways, which makes unnecessary the use of the Public Market Platform for these purposes.
5. Regarding the circumstances under which private bidding or direct contracting proceeds, it is established that for certain cases of article 10 of the Regulation [2] [3] , the obligation to provide a guarantee of faithful contractual compliance by the supplier is eliminated, even for those contracts that exceed UTM 1000 (USD 63,000 approximately), provided when public entities consider that there are enough mechanisms to safeguard the contractual compliance and when contracts are related to public interest or national security matters.
6. Public entities may provide in their bidding rules that temporary unions of suppliers are not allowed, when they are deemed to carry out a risk for the bidding process, given the particularities of the industry, the good and/or the service subject to a public bidding.
7. Finally, it is provided that the Public Procurement Department may issue general orientations and recommendations, which must aim to create greater efficiency and probity in public purchases and coordinated purchase procedures.

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[1] Direct contracts or agreements contained in numbers 3, 4, 5, 6 and 7 of Article 10 of the Regulation.

[2] 4, 5 and 7 letters d), e), f), i) and k) of article 10 of the Regulation.

3 **(i) numeral 4:** when there is only one supplier of the good or service; **(ii) numeral 5** : when dealing with services to be concluded with foreign legal entities for services outside the national territory; **(iii) numeral 7 letter d):** in the case of entrusted consultancy with special consideration of the powers of the supplier; **(iv) numeral 7 letter e)** : contracting with suppliers that are holders of industrial, intellectual property rights, licenses, patents and others; **(v) numeral 7 letter f):** when the magnitude of the contracting makes it indispensable to resort to a certain supplier whose experience provides confidence and security; **(vi) numeral 7 letter i):** acquisitions of personal property from foreign suppliers to be used or consumed outside Chile; **(vii) numeral 7 letter k):** goods or services destined to specific teaching , research or extension projects in which the public bidding procedure may put the project in question at risk.

Authors: Ignacio Gillmore; Camilo Lledó