

NEW DECREE THAT MODIFIES THE PUBLIC PROCUREMENT REGULATION

Last August 12th entered into force Decree No. 1410, which made a series of modifications to the regulation enacted under the Law of Administrative Procurement and Services Contracts ("Public Procurement Law"), contained in Decree N. 250 of 2004.

The main purpose of Decree No. 1410 is to help facilitate access of smaller companies to the Public Procurement System and to strengthen the honesty and transparency of the contracts made by the Government. The main modifications introduced are the following:

1. ADMINISTRATIVE LIABILITY

There is a new rule that expressly states there is administrative responsibility if a Government agency makes an improper direct purchase.

Even though this rule does not create a new offence or sanction, it does strengthen the duty of the Government in order that direct purchases must be properly substantiated.

2. INCORRECT ESTIMATE OF COSTS

In the event the awarded amount in a public tender exceeds the original estimate for more than 30%, there is an obligation for the agency hosting the tender to clearly state the technical and economic reasons that justify such difference. The background information of this decision must be kept on record in order for its future revision and control by an audit authority. Just like the previous change, this strengthens the proper behavior of Government agencies in contracting processes.

3. CONTRACT RENEWAL

Government agencies will be permitted to execute procurement or service agreements that have renewal clauses, unless there are substantial reasons, which must be expressed in the bidding

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conditions. And, even in that case, the renewal can only be made once.

This change is a recognition of the decisions issued by the General Comptrollership of the Republic on this matter, since it had already stated its position by limiting the possibility of renewing existing contracts, all with the purpose of avoiding an infringement or bypassing of the public procurement system, a system which must benefit tender processes with a greater number of participants.

4. NEW OPERATION SYSTEM IN THE FRAMEWORK AGREEMENT FOR THE BENEFIT OF SMALL COMPANIES

In order to make the participation of small and medium companies easier in the public market, it is stated that the bidding conditions of Framework Agreements may not require the filing of offer and performance warranty bonds.

However, when the procurement is for an amount greater than 1,000 UTM (approximately USD 64,000), the government agencies must still require a performance warranty bond.

5. REASONABLE PAYMENT TERMS

The new article 79 bis of the public procurement regulation states that the payment term to providers cannot be more than 30 calendar days, counted from the reception of the invoice by the Government. Longer periods may be established, but they have to be imposed based on substantial grounds.

Even though this change theoretically implies an obligation that must be complied with by the Government agencies and that must be incorporated in the contracts that they execute with the providers, there is no sanction in the event of an infringement to this term. This means that this new rule does not necessary entail a clear improvement in the payment situation of Government suppliers.

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