

Costa Rica

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IV. TRADE POLICIES AND PRACTICES BY MEASURE

(2) Measures Directly Affecting Imports

(xv) Government procurement

92. As stated in Chapter II, Costa Rica is not a signatory of the Uruguay Round Agreement on Government Procurement.

93. Public procurement legislation, applying to purchases of the Central Government and the Municipal authorities, is found in the detailed provisions of the Regulations on Administrative Contracts (*Reglamento de la Contratación Administrativa*) the Municipal Code (*Código Municipal*) and the recently enacted laws<sup>1</sup> on public works (*Ley de Concesión de Obras Públicas*) and service companies<sup>2</sup> (*Ley de Sociedades Anónimas Laborales*).

94. The Procurement by State enterprises is governed by rules contained in the Regulation on the Functioning of State Trading Enterprises (*Reglamento sobre el Funcionamiento de Empresas Estatales Estructuradas como Empresas Mercantiles*). These enterprises are simply advised to seek fair and reasonable pricing, and are required to announce through the daily press the closing dates for offers to be made. The Comptroller-General's Office (*Contraloría General*) can ex post revise contracts concluded by these entities.

95. The legislation provides for transparency by publication of calls for tender, mostly in the official journal, "*La Gaceta*". In principle, the legislation does not contain any preferential margins or procedures favouring domestic suppliers or products, except for: goods and services produced by a sole national producer and which are offered at wholesale price<sup>3</sup>; and public works contracts where there are similar offers by domestic and foreign bidders.<sup>4</sup> The use of similar principles cannot be confirmed for the purchases of public enterprises.

96. In Central Government purchases, both the ordering agency and the National Supply Agency (*Proveeduría Nacional*) of the Ministry of Finance may intervene. The latter is the main purchasing body responsible for organizing all stages of the procurement procedure. It stores supplies, receives orders by all agencies, and transmits all adjudications and appeals to the Comptroller-General's Office.

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<sup>1</sup>Law 7404, 3 May 1994; Law 7407, 8 May 1994.

<sup>2</sup>These enterprises, in which the State may hold a maximum capital participation of 20 per cent, may provide, inter alia, cleaning, surveillance, building maintenance, catering, secretariat, calculation, storage, laboratory analysis, printing, entertainment, public relations, training and transport services, as well as a wide range of professional services.

<sup>3</sup>Direct purchase procedures are used in this case. This procedure seems to be used in exceptional cases such as the purchase of oxygen and acetylene for hospitals (from *Almacén Miller*), dynamite (from *Lodinsa*) and fuels (from *RECOPE*). No detailed data on this type of purchasing are available because no prior authorization is required by the Comptroller-General's office or the National Supply Agency.

<sup>4</sup>Article 14 of Law 7404 gives preference to domestic contractors. Under Article 8, foreign companies which are awarded a public work contract must either move their headquarters in Costa Rica or establish a local stock company (*sociedad anónima*).

The Municipal authorities manage their purchases independently but can inform the Comptroller-General's Office, which has access to this information in the event of appeals and adjudications. Whenever appropriate the IFAM (section (2)) undertakes purchases for municipal authorities (e.g. heavy machinery) so as to obtain better prices; it also provides finance for such purchases.

97. Six procedures, not applicable to State enterprises, are available for central government and municipal purchases of goods or services:

- (a) Public or open bidding, applying to contracts for values exceeding US\$31,000, is the most widely used procedure. It is also used for granting franchises for public services or adjudicating public works contracts. Under Chapter IV, Title III of the Regulation on Public Contracting (*Reglamento de Contratación Administrativa*), bidders are, in principle, obliged to deposit a participation guarantee (*garantía de participación*) equivalent to an amount varying from 1 to 5 per cent of their price quotation (*cotización*); the winner of the bid must deposit a 5 per cent completion guarantee (*garantía de cumplimiento*). Guarantees are deposited as bonds at the National Insurance Office (*Instituto Nacional de Seguros, INS*) or one of the State banks;
- (b) Item specific or selective tendering is used for pre-qualified bidders;
- (c) Competition based on previous records (*concurso de antecedentes*), which is used in contracts for professional or technical services where price is not a decisive element. Under Article 180 of the Administrative Contracts Regulation, this procedure is not available for such services as notarial, legal aid, medical assistance, mass media transmission or public notices, trade brokerage, expertise and other activities determined by the Comptroller-General;
- (d) The simpler, private tendering procedure, (*licitación privada*), used for contracts of less than US\$31,000;
- (e) Direct purchase or contracting (*contractación directa*), used in exceptional circumstances mainly for purchases valued at less than US\$17,900, goods or services produced by a single national supplier and offered at wholesale prices items bought frequently or regularly, exclusive or unique items produced by specific companies or not subject to competition, genuine parts, security devices, arms and ammunition, goods provided by public entities with maximum remittance of 10 per cent of the value; printing of money, fiscal and similar value titles; machinery repairs; and emergency circumstances. No data is available on purchases and values involved;
- (f) Purchase of minor goods, used for purchases of urgently required goods valued at not more than US\$465. For this, a limited fund (*caja chica*), exists in every Ministry.

98. Under exceptional circumstances, such as in national emergencies, the number of bidders can be limited.

99. Following analysis of offers, bidders' prices may be considered as unacceptable whenever these are excessively high (15 per cent above normal market prices) or out of reach; ruinous for the bidder or below cost; or, constituting dumping prices.

100. Appeals are permitted for each public tender and after their resolution new offers, often under new specifications, must be submitted. Depending on the value of the contract, appeals relating to central government contracts can be directed to the administration, in particular the National Supply Agency (*Proveeduría Nacional*) or the Comptroller-General's Office.

101. An Automated Information System (*Sistema de Información Automatizado*), introduced progressively as from June 1993, allows the National Supply Agency (*Proveeduría Nacional*) to maintain a suppliers registry (*Registro de Proveedores*) and products list (*Catálogo de Artículos*); to follow the different procurement procedure stages; to collect information on the procurement procedures and items purchased each year by agency. The system is now operational, and terminals should be installed in all ministries by the end of 1996.

102. Overall the public procurement market for goods and services of Costa Rica was worth US\$1.4 billion in 1993 (Chart IV.3).<sup>5</sup> It has also been expanding rapidly, although detailed data are not available. As an illustration, from 1991 to 1993 procurement by the Central Government doubled, reaching US\$90 million. Non-professional services became an increasingly important component. In 1993, procurement represented more than 40 per cent of local authority spending. The main purchases under public procurement in 1993 were the Central Government, local authorities, public institutions providing specialized services, non-financial public entities, financial public entities and public enterprises established as stock companies (*sociedades anónimas*).

103. Between May 1993 and April 1994 purchases by the National Supply Agency were carried out through public bidding (168 contracts), private tendering (404 contracts) and direct purchases (4,390 contracts); they represented 45 per cent of the national budget expenditure for goods and services.<sup>6</sup> Chart IV.4, which excludes State enterprises, constitutes an attempt to illustrate the major public sector buyers of imported items for own-consumption or resale (State trading) purposes, but further statistics on procurement methods, origin of purchases or suppliers (domestic or foreign) are not available.

104. Although existing procedures for government procurement seem to have been slow and costly, the authorities consider that the overall experience has been positive. A public procurement bill (*Proyecto de Ley de Contratación Administrativa*)<sup>7</sup> was under examination by the Legislative Assembly in late 1994 and should be promulgated as a law in 1995. This forthcoming law, a revision of the existing system, should cover all procurement carried out with public funds, including that of public entities and State enterprises. The National Supply Agency is to become the nationwide supervisory body on public sector procurement. In general, the proposed changes are an attempt to achieve uniform and simpler procedures, based on principles such as unrestricted competition, promptness, transparency and non-discrimination.

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<sup>5</sup>Figures based on Contraloría General de la República (1994).

<sup>6</sup>Ministerio de Hacienda (1994).

<sup>7</sup>Bill 11840 published on 13 October 1994.

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