

Report No. 39594-CR

# Republic of Costa Rica Country Procurement Assessment Review (CPAR)

November, 2006

Central America Country Management Unit  
Operations Services Department  
Latin America and the Caribbean Region  
The World Bank

Regional Operations Department 2  
Modernization of the State  
Division (RE2/SC2)  
Inter-American Development Bank



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## **CURRENCY EQUIVALENCY**

(Exchange Rate to April 20th, 2005)

Monetary Unit = Colon  
C467.23 = US\$1.0  
US\$1.45 = SDR 1

## **FISCAL YEAR**

JANUARY 1st – DECEMBER 31st

## **WEIGHTS AND MEASURES**

METRIC DECIMAL SYSTEM

### **INTER AMERICAN DEVELOPMENT BANK**

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SECTOR MANAGER	JORGE SAPOZNIKOW
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**ACRONYMS**

AyA	Costa Rican Institute of Water and Sewage Systems
IADB	Inter American Development Bank
BIRF	International Bank for Reconstruction and Development
CCSS	Costa Rican Social Security Office
CGR	Office of the Controller General of the Republic
CONAVI	National Highway Council
CPAR	Country Procurement Assessment Review
DGABCA	Head Office of Goods Administration and Administrative Contracting
DGPN	Head Budget Office
DR-CAFTA	Dominican Republic-Central America Free Trade Agreement
ICE	Costa Rican Institute of Electricity
INS	National Institute of Insurance
MH	Ministry of Finance
MOPT	Ministry of Public Works and Transport
OIT	International Labor Organization
OMC	World Trade Organization
PIB	Gross Domestic Product
PN	National Procurement Office
PNB	Gross National Product
PNUD	United Nations Program for Development
PUSC	United Social Christian Party
SICA	Administrative Contracting Information System
SIGAF	Integrated Financial Management System
TLC	Free Trade Agreement
UE	European Union



**COSTA RICA**  
**Country Procurement Assessment Review (CPAR)**

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## PREFACE

The CPAR is an analytical diagnostic tool that the Inter American Development Bank (IDB) and the World Bank (WB) use to (i) design programs geared towards improving the public procurement system in Costa Rica and (ii) more effectively coordinate with other cooperation agencies to identify priorities and activities for public sector reform.

In addition to its value as a diagnostic tool, the CPAR is directly linked with the execution of programs contemplated in the Country Assistance Strategy for Costa Rica (CAS) set forth by the World Bank and IADB. In this sense, the CPAR supports both Banks in the execution of fiduciary responsibilities and the identification of the strengths and weaknesses of public procurement in order to evaluate and manage potential risks in the use of the funds of both institutions.

This CPAR was compiled according to the internal World Bank directives issued on May 23, 2002, including: (i) the Memorandum of Initiation on March 22, 2005; (ii) interviews with representatives of the public and private sectors conducted by experts from IADB and the WB during visits made to San Jose in the months of February-April of 2005; (iii) analysis of laws, subsidiary instruments, questionnaires, surveys and other information and documents compiled during the CPAR fact-finding missions; (iv) the Country Assistance Strategy for Costa Rica (WB, 2004); (v) the workshop to evaluate the progress the Government has made in electronic procurement held on April 1, 2005; (vi) presentation of the CR CPAR report to the Ministry of Finance, Comptroller's Office, and other relevant central government agencies, decentralized public entities and civil society on November 30, 2005 and; (vii) after the deference of clearance to the in-coming administration after elections in May 2006, a presentation of the CPAR to the new government administration and an updating of progress made at the government authorities' request on November 9-10, 2006.

This CPAR was prepared jointly by IADB and the WB in coordination with officials from the Ministry of Finance and the Controller General of the Republic. The CPAR team was comprised of the following individuals: Hugo Betancor (Coordinator of the Anti-Corruption and Transparency Units, RE2/SC2, IDB), Roberto Camblor (Operations Specialist, RE2/SC2, TENDER), Joao Veiga Malta (Specialist in electronic procurement, IADB), Luis Tineo and Evelyn Villatoro (LCOPR, WB); invaluable technical assistance was provided by Jose Moscoso, Enrique Pinilla, Fernando Ocampo and Jorge Enrique Vargas (experts in public procurement). The team would like to thank Bernard Becq, Enzo De Laurentiis, Rajeev Swami, Carlos Felipe Jaramillo and Ana Lucía Armijos (WB) for their guidance and contributions regarding normative, institutional and financial management issues.

Contributing Peer Reviewers for this report were: Sabine Engelhard, Procurement Division of the Inter American Development Bank, Leonid Vanian, Senior Specialist (EASPS), Menahem Libhaber, Head Water and Sanitation Specialist (LCSFW) and Joel A. Turkewitz, Senior Procurement Specialist (OPCPR).

In November of 2006, the Banks presented the CPAR report to the new administration authorities, discussed its content and assessed progress made with high-level government officials. Annex VI to this report summarizes the actions taken and progress made as of June of 2005 in the implementation of the Plan of Action recommended in Annex V to the report. Input for assessment of progress was received during the carrying out of a Discussion Workshop conducted in San José, Costa Rica on November 9-10, 2006 with the participation of specialists from the Banks and high-level Government Officials.

## **EXECUTIVE SUMMARY**

### Background information on the Country

1. Over the last decade, Costa Rica has made significant progress in the area of public procurement. The basic frameworks for norms, institutions and organization are strong. The overall capacity of the system, and specifically the system for control, is sufficient. Moreover, it is apt to conduct relatively efficient and transparent procurement operations throughout the public sector to execute budgets and reach institutional and development objectives. Notwithstanding, the system must be further modernized to incorporate new and effective public procurement methods so as to strengthen economic integration policies and market liberalization in Costa Rica. Other recent events have produced a need to fine-tune and further improve systems such as the incorporation of advanced technologies for information processing and management (electronic procurement) and the commercial agreements signed by Costa Rica, specifically the Central American Free Trade Treaty- Dominican Republic (DR-CAFTA).
2. The growth strategy focuses on exports and the liberalization of foreign investment, much in the same way that the growing competitiveness of the international markets of certain Costa Rican sectors, including the electronic and service segments, non-traditional agricultural products and ecotourism, has driven worldwide economic integration. One of the results of these policies has been an increase in the demand for public services, infrastructure, and social programs. The leader role of the State which is particularly strong in Costa Rica in the provision of these services -given that fewer public services have been privatized in comparison to similar efforts in other countries in the region- has direct implications for the public procurement market and generates higher demand and attracts more participants from both the national and international private sector. Accordingly, DR-CAFTA incorporates important provisions on procurement; provides an additional opportunity for growth based on commerce; and stimulates the modernization of the public procurement system.
3. Costa Rica is considered a leader in information technology in Central America. It is indisputable that electronic systems have significantly contributed to financial management and its control. The government's incipient electronic strategy promises to contribute significantly to the efficiency of public resource administration, and the subsequent savings could be used to free-up space in the Government's limited budget. An improvement is also expected in government activities and in the accountability of public officials. Specifically speaking, it is probable that greater progress in e-procurement will contribute significantly to improving the efficiency and transparency of the procurement system (at the level of results) if initial efforts are focused on widely disseminating information in a consistent manner. Subsequent goals should introduce transactional phases that propitiate an improved consolidation of demand and more effective procurement methodologies.

### An overview of the Public Sector Procurement System

4. Public procurement is an important part of the Costa Rican economy. During the period from 2003-2005, the average budget for procurement, works and services for the public sector was US\$3,687,000,000, which represents more than 20% of the GDP. This figure represents a significant portion of the expenses budgeted by the Government (77%) and reflects an increase of 3.6% for the period from 2001-2003. Despite this, public procurement has yet to be recognized as a key aspect in public sector spending management in Costa Rica and as such, it has not been fully incorporated in the financial management system.

5. Although the normative frameworks for public procurement and external control apply to all public entities, a degree of fragmentation exists in the system that impedes monitoring of integral performance to draw general conclusions. The Procurement Law establishes the General Office for Goods and Administrative Procurement Supervision (DGABCA) as the procurement supervisory body within the Ministry of Finance. Nevertheless, DGABCA only supervises central government agencies that make a limited number of purchases and, as such, has little impact on and knowledge of integral system management for public procurement. Moreover, the universe of public procuring entities is divided between the Central Government agencies, supervised by DGABCA, and autonomous entities that are regulated by the Controller Office Organic Law. This institutional array is not conducive towards implementation of a centralized policy design approach and oversight of the public procurement system. All procuring entities are subject to external control by CGR, whose opinions have considerable weight in the interpretation of the normative framework. This concurrent supervision and the limited scope and role of a specialized procurement policy has contributed to slow progress in developing an integral, long-term vision and a coherent conceptual framework that adequately incorporate government procurement policy objectives. This explains why the efforts to improve the system have been centered on specific technical and procedural aspects, as opposed to focusing on the need to create a more complete and encompassing system for public procurement.

6. A significant percentage of the procurement budget (93%) is concentrated in a few agencies- all of which are autonomous- that are entitled to engage in procurement. Amongst these entities, the Social Security Office (CCSS), the Costa Rican Institute of Electricity (ICE), and the Costa Rican Oil Refinery (RECOPE) manage 62% of the procurement budget. Only 6% of this budget is managed by central government entities and 2% is handled by municipalities and local agencies.

7. One of the reasons behind the heterogeneity currently found concerning procurement methods is that the thresholds for the use of specific methods are not applied uniformly, but instead respond to the scale assigned to each institution according to the size of its budget. In addition, the diversity of procedures and tendering documents utilized at the institutional level has caused a proliferation of application practices. Some of the consequences of this fragmentation are: inefficient planning, fragmentation of contracts,

and the excessive use of direct contracting, which result in a lack of consolidation and efficiency in procurement.

8. Another factor that limits the system's efficiency is the insufficient use of information technology as a tool for management and control. There are currently no technological barriers in Costa Rica; the problem lies in a lack of strategic vision. Although each entity generates information on purchases, the quality and veracity of this information varies. Worse yet, this information is not utilized effectively either at the entity or central government level for planning or control. The absence of complete statistics on procurement and methods to evaluate the same also impedes the design of efficient policies. This is due to the fact that it is difficult to identify patterns, learn from mistakes, and continue improving the system to achieve greater efficiency. Subsequently, efforts to determine if the public spending system is achieving its development objectives efficiently are hampered. For example, in order to determine the value for the money relation, precise purchasing statistics are needed and strong ties must exist between procurement plans, the budget process and various aspects of the financial management at the budget execution stage. The data used currently on budget execution are based on budget allocated and not on money actually spent.

9. The electronic procurement system, e-GP (COMPRARED), which is administered by the DGABCA under the supervision of Ministry of Finance, has achieved significant progress and the next phase should significantly increase the system's functionality. Despite the fact that a web site has been implemented to publish procurement information, its use is limited to Central Government agencies. Various entities are developing e-GP systems that will operate in parallel to COMPRARED. This approach will not contribute to efficiency or transparency given that it does not offer a single system that can be utilized by the entire public sector. COMPRARED has the technical capacity to provide reliable data but covers only Central Government entities and as such fails to make an effective contribution to the efforts to globally monitor public procurement in Costa Rica.

10. Although the entities that spend the most generally possess technical experience in procurement, their internal processes are unnecessarily slow. A study conducted on the three most important autonomous entities indicates that the procurement cycle for tendering includes many steps that may in fact not add value. For example, the internal process at CCSS requires 19 steps for a simplified procurement order for medicines. Ten different administrative offices must intervene in the process, which can take up to 169 days to complete from the date of purchase requisition to the date on which the medicines are actually received. Public tendering takes an average of 240 days; several modalities of limited tenderings take between 225 and 163 days, and even direct procurement takes approximately 62 days.

11. Traditionally, Costa Rica has maintained a reputation for transparency, as compared to many countries in the region. This reputation is due in part to a strong system of control. The Controller's Office is very competent and has a good reputation. It conducts reviews before, during and after procurement processes. In each agency, a single procurement process requires multiple reviews and approvals by several public officials

and committees. Nevertheless, this traditional method for procurement is not necessarily the most effective, as is shown by Costa Rica's recent decline in the corruption perception indexes. Additionally, this approach can cause unnecessary delays and does not propitiate the accountability of public officials. Modern methods propose strong internal controls based on an integral risk prevention strategy implemented at all levels of the organization, and ex-post reviews are preferred over omnipresent ex-ante control. Costa Rica has adopted an internal control framework based on the method of the Committee of Sponsor Organizations of the Treadway Commission (COSO) but has yet to implement this model throughout the public sector. The fragmentation of the system -which complicates its interpretation- and the culture of rigid controls have propitiated a culture that is overall risk adverse which frequently impedes efficient decision making.

12. The procurement process within IADB-WB projects, including the GEF (donations for the environment), is considered satisfactory despite the fact that some delays have arisen during the implementation stage. Most agencies in charge of project implementation have designed procurement contracts according to IADB-WB norms and have utilized the Bank's standard tendering documents. The number of complaints received has not been significant and the inspections conducted have not found evidence of corruption, fraud, mismanagement of procedures, or misuse of funds. Nevertheless, an issue that affects IADB and WB projects involves the interpretation of the Constitution and the Local Procurement Law (LCA) with regards to the use of IADB and WB procurement guidelines.

13. 13. The LCA grants preference to the purchasing guidelines of IADB and the WB above those of LCA within the limits of the loan agreements and the stipulations of the Constitution. Despite this, some of the laws passed by the National Assembly (which approves loan agreements for project financing) are not aligned with ad-hoc practices and the manner in which some executing agencies and the CGR interpret the LCA. Frequently, LCA requirements place restrictions on IADB and WB procurement policies, propitiating delays at project preparation and implementation stages. This issue affects both the procurement of goods and works as much as the selection of consultants. Other related aspects to this issue include bidder eligibility (short list), guarantee requirements, and procedures for negotiation of contracts. The majority of IADB and WB projects require assistance from consultants, either firms or individuals. As such, dialogue is needed to achieve harmony and effectiveness.

#### Plan of Action Recommended

14. This report was designed to provide a guide map for dialogue with the Government. Although it includes various recommendations, Costa Rican authorities must be engaged in a joint effort to develop a detailed plan of action that includes a priority financing program. This effort should initiate once the issues and recommendations listed below have been discussed and agreed upon in the presentation workshop. This encounter will also provide an opportunity to identify the individuals who will lead the pro-reform effort and determine their roles in the implementation of the action plan agreed upon.

15. In order to progress, Costa Rica should consolidate its considerable strengths and concentrate its efforts on modernizing its system to achieve its full potential. The principal challenges include: (i) to simplify the implementation and control processes; (ii) to establish a unified strategic vision and tools for consistent management; (iii) to strengthen the ability of the entities in charge of the implementation process to plan, monitor, and evaluate procurement; and (iv) to maximize the use of information technology and modern procurement programs. It is more than likely that consistent efforts in the aforementioned areas will generate significant savings through improved use of resources, efficient processes, and better prices as the market of public procurement becomes more competitive and dynamic. In order to achieve these objectives, it would be recommendable to take the following priority actions.

16. To increase the efficiency of the system for control. The CGR should reevaluate its tendency to issue technical opinions regarding procurement processes and concentrate efforts on strengthening the responsibility of procurement entities. This will limit ex-ante interventions that are not necessarily focused on ensuring compliance with legal requirements (e.g. decisions on large procurement). CGR has proposed an amendment to the LCA that limits its interventions in public tendering, where the most serious controversies arise regarding awards. To maximize this focus, it is particularly important to adopt consistent thresholds for public competitive bidding. These thresholds should not be based simply on the budget amount allocated but should instead include a risk analysis on the method applied, the value of the contract, and the capacity of the local industry. All of these considerations should be included in a matrix that will provide the criteria that will be used to identify the most cost effective procurement method to use.

17. Strengthening of the Normative Function and Policy Oversight. It is particularly important to create a normative entity with the resources, mandate, and the ability to take a leadership position in the development and implementation of an integral strategic vision for the public procurement system. That entity should promote best practices in the areas of planning, implementation, and performance monitoring to ensure consistent compliance of procurement units with public procurement and guarantee that objectives are met. The Normative Entity could facilitate all procurement activities conducted in the Proveedurías within all public institutions by regulating detailed procedures, planning, and procurement monitoring and improving the registry of suppliers and contractors. This registry should be a source of unified information but its use need not be of a mandatory use. The normative agency could provide other types of support, including the development of standard bidding documents for goods, works and services in addition to basic performance indicators focused on the efficiency of transactions and cost-effectiveness. A possibility could be to strengthen the DGABCA, whose mandate is consistent with the support tasks described above. However, this institution still lacks the resources and political scope to be widely effective. Another possibility would be to establish an inter-institutional committee that will include the DGABCA, the highest instance in charge of auditing processes (the CGR), and the most important autonomous entities. The mandate in this effort will be to identify the most effective towards improvement of the key aspects of the system in order to make it more efficient. For instance, some of these aspects could include the

improvement of the registry, procurement planning and procedures for bid evaluation and contract awards.

18. To implement the second phase of COMPRARED. The objective is to strengthen the system development by expanding its current functions. COMPRARED should have the capacity to capture accurate information on the current procurement amounts and include a complete range of relevant market information. If it is able to include all government procurement, COMPRARED could become a key instrument for the government and could help to increase transparency and efficiency. This would require that all entities that are not currently included in COMPRARED must adopt this system as a tool for electronic procurement. This will in turn facilitate the integration of all existing information and the monitoring systems that are currently dispersed throughout other entities. If other entities are included in COMPRARED, the Government will need to consider the implications- in both the short and long term- of using an e-GP based on a financial management system (SIGAF), whose coverage is limited to only 6% of public procurement. Additionally, the e-GP coding system should be reexamined given that it falls short of international standards (initially based on the UNCPCS but which utilizes codes to identify spending categories according to the Government's budget). This could have a positive impact on the opening of the system and compliance with Free Trade Agreements, particularly the DR-CAFTA. It is important to establish a difference between the functions of a procurement coding system and those associated with a financial management system.

19. To give priority to efforts to improve the efficiency of public procurement by focusing first on the Autonomous Entities. Given that these institutions use the majority of the public procurement budget, any improvement in their practices and methods will have a positive impact on the system's results. Findings indicate that these institutions have different practices and capacities. It would be recommendable to initiate an in-depth institutional evaluation of the Social Security Office, the Costarrican Electricity Company (ICE) and the Petroleum Refinery given that these entities account for the majority of procurement spending. These evaluations should identify best practices (in terms of procurement planning, management cycle and control) that could serve as a model for development of tools and practices and replicated throughout public administration. For example, it would be worthwhile to examine the human resource policies and the training programs developed by ICE. These institutional evaluations should help identify weaknesses in the normative and institutional frameworks and serve as a basis upon which to recommend system reforms in the medium and long terms.

## **CHAPTER I AN OVERVIEW OF THE PUBLIC SECTOR PROCUREMENT SYSTEM**

### **I. Country status**

1. Costa Rica is a middle income country with a population of approximately 4 million inhabitants and a GDP per capita of US\$ 4,324. Costa Rica is one of the most stable countries in Latin America, and its governments have been elected democratically since 1949. The country's economic structure has moved beyond agricultural dependence and agro-industry to an economy of electronic services, non-traditional agriculture and tourism, particularly ecotourism. An evaluation of the private sector focused on the relevant aspects of public procurement is included in Annex II.

2. During the majority of the decade of the 1990's, the country enjoyed, in macroeconomic terms, average economic growth of approximately 5% of the GDP. At the end of the decade, however, real growth decreased to a rate of 2% (2000-2002). Although growth in 2004 was higher than predicted (close to 4%), due primarily to high growth in exports, vulnerabilities remain. The fiscal deficit remained around 5% of the GDP, and the public debt at the end of the year was 53% of the GDP.

3. The current administration launched an Economic Recuperation Plan in 2004 in consensus with political actors and civil society. The principal objectives of the Plan are to achieve an increase in economic growth and poverty reduction by decreasing fiscal debt and providing increased support to tourism, agricultural and small and medium businesses. In the short term, the government's efforts are centered on two key objectives: a) fiscal reform and b) the free trade agreement (DR-CAFTA).

4. Tax reform has also been proposed as a means to attack fiscal deficit. Its objectives are to modernize the system, eliminate exonerations, improve equity and increase the GDP by 2% through increased collection. The government is placing considerable emphasis on demonstrating its commitment to efficiency, effectiveness, and transparency in the use of tax money.

5. The start-up of the DR-CAFTA will require significant commitment from the government, which will assume the responsibility of promoting measures geared towards modernizing the state in key areas. This effort will involve national, provincial, municipal levels and autonomous entities and state enterprises. In public procurement, an adequate implementation of the DR-CAFTA will represent an opportunity for the government to continue modernizing, deepening and consolidating the reforms advanced to date.

## II. The Public Budget and Government Procurement<sup>1</sup>

6. Government agencies (central and adjoined dependencies, parastatal and local governments) utilize the Procurement Law (LCA) to procure goods and services and contract works through available capacity at each agency. The LCA and its Regulations (RCLA) apply to all procurement in the public sector that is financed with budget resources.

7. Unlike other countries in Central America, multilateral and bilateral cooperation agencies play only a small role in public investment in Costa Rica. Consequently, the Costa Rican procurement system, with the exception of some specific programs, is not subject to the procurement norms and procedures required by these agencies, and are not obliged to use project executing units.

8. Approximately 95% of the public budget for procurement is executed by the Central Government and autonomous institutions. The Executive Branch is divided into the Central Government (Ministries and adjoined dependencies for a total of 75 institutions), Autonomous Institutions (11 decentralized entities), the Municipalities, State Businesses and other institutions (i.e., BCCR, BCR, BNCR, BCAC, Official Paper, SNET).

9. The public budget allocated to public procurement has been stable in Costa Rica. In the three-year period from 2003-2005, the average volume for procurement of goods, non-personal services<sup>2</sup> and public works in Costa Rica was US\$3,687,000.<sup>3</sup> This amount represented a significant portion of the total expenses budgeted by the State (77%), and reflects an increase of barely 3.6% in comparison with the amount budgeted during the years from 2001-2003.<sup>4</sup> The following chart shows the amount budgeted for procurement in the three year period from 2003-2005. These statistics are based on budgets and not on actual spending.

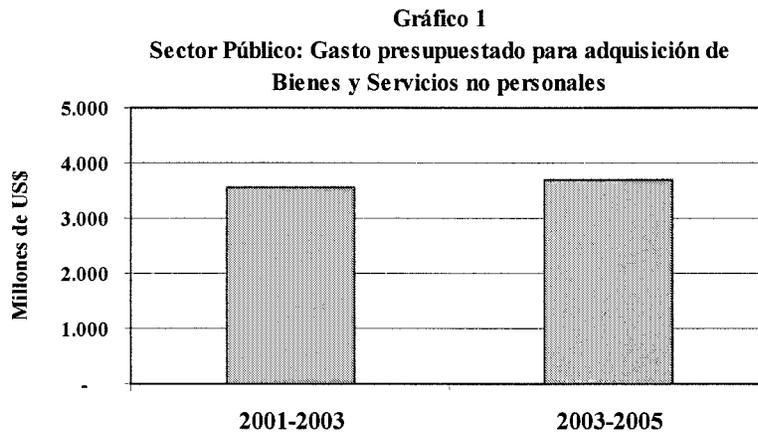
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<sup>1</sup> The CPAR team, in a joint effort with the team of the Financial Assessment and Accountability Assessment Report in the Public Sector (CFAA) analyzed in parallel the efforts for the modernization of budget, accounting, treasury, public credit, and human resources management systems through the Integrated Financial and Administrative Management Information System (SIGAF). More specifically, the teams examined the following aspects of the regulatory and institutional framework and responsibility for public spending: (i) budget preparation, monitoring, and execution; and (ii) the SIGAF with regards to public procurement and contract management functions. Nevertheless, in order to maintain thematic consistency, the CPAR team differentiated between the specific analysis and the recommendations in financial management areas, including the effective operation of the CGR, which is referred to extensively in the CFAA. See CFAA, June of 2005, WB-IDB.

<sup>2</sup> Non-personal services (*Servicios No Personales*) are services not remunerated as civil servant salaries.

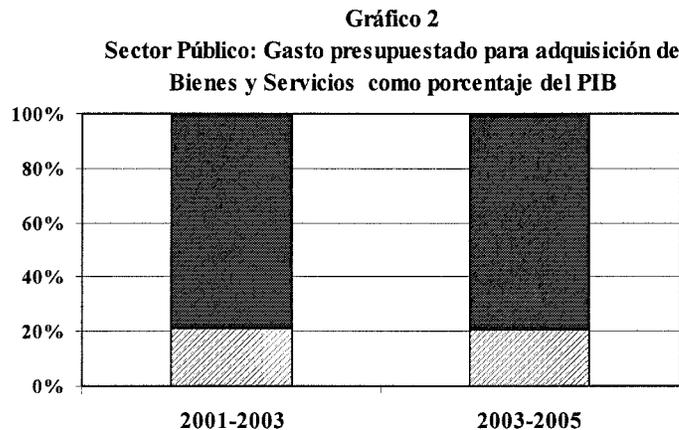
<sup>3</sup> This figure takes into account the amounts budgeted by public institutions at the outset of each year due to unavailability of a system capable of compiling information related to budget effectively executed by each government institution.

<sup>4</sup> To calculate the figures in the charts, the average annual interbank exchange rate for buying and selling of the Central Bank of Costa Rica was used along with government data provided by the Ministry of Finance.



Fuente: Contraloría General de la República de Costa Rica

10. The average expenditure budgeted for procurement of works, goods and non-personal services has represented slightly more than 20% of the national GDP for the last five years,<sup>5</sup> which is roughly equivalent to the amounts registered for the manufacturing sector and around three times that observed for farming and animal husbandry. Chart 2 shows the importance of this item as a percentage of GDP.

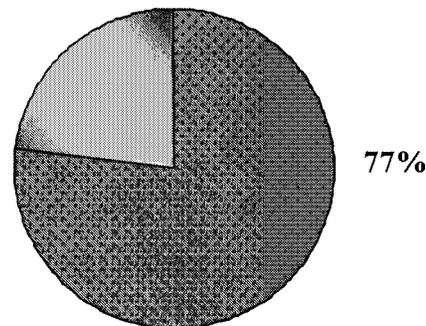


Fuente: Contraloría General de la República y Banco Central de Costa Rica

11. In the same sense, if the expense budget for the procurement of goods and non-personal services is analyzed as a percentage of the national budget for the period of 2003-2005, it is evident that 77% of the total amount budgeted for the public sector, including decentralized entities, is destined to the purchase of goods and non-personal and services.

<sup>5</sup> A brief analysis of the expenditures of a few institutions and the amounts contracted by institutionalized procurement units indicates that public sector procurement represents only 6-7% of the GDP.

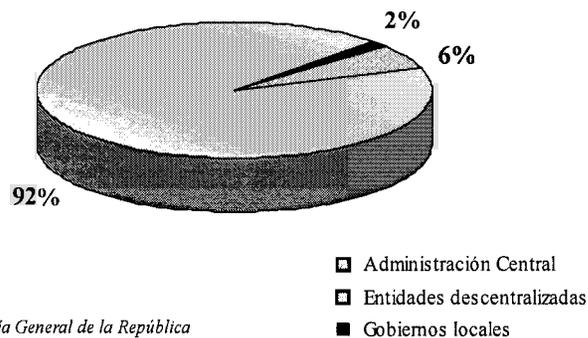
**Gráfico 3**  
Sector Público: Gasto para adquisición de Bienes y Servicios  
como porcentaje del Presupuesto Nacional (2003-2005)



*Fuente: Contraloría General de la República y Ministerio de Hacienda*

12. The importance of each public institution within the percentage of public procurement varies. Graph 4 shows that 92% of the purchases in the public sector are made by decentralized agencies, 6% by central administration and only 2% are conducted by municipalities or local governments.

**Gráfico 4**  
Sector Público: Distribución del Gasto para adquisición de  
Bienes y Servicios, por tipo de entidad (2003-2005)



*Fuente: Contraloría General de la República*

### III. Budget Classification and the Profile of Public Procurement

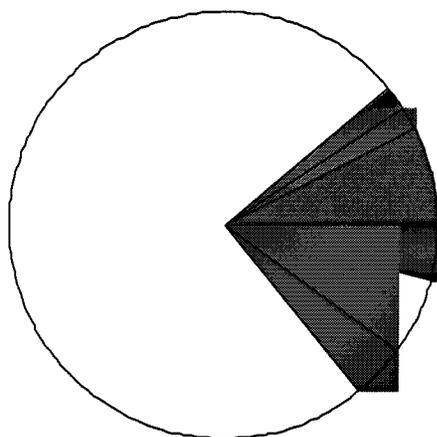
13. Every year, the Controller General of the Republic establishes the financial limits upon which each of the procurement methods provided in the Procurement Law (LCA) is to be applied. To this end, entities are grouped into strata according to the budget amounts each entity has been assigned by indicating the minimum and maximum thresholds amounts for use of each method according to stratum. According to the stipulations set forth, the Controller General's Office, and not the respective authorities of each entity, must resolve appeals in bidding processes where the estimated contract price exceeds the threshold above a pre-established limit.<sup>6</sup>

<sup>6</sup> The latest up-date published by the Controller General's Office was published in the Official Paper La Gaceta No 34, dated on Feb. 17, 2005.

14. This threshold-based methodology is not applied in a uniformly manner. Each institution, depending on the stratum in which it is found, has its own ranges and maximum amounts, which are utilized to determine the last instance of the procedure applicable to each contract.<sup>7</sup> The categorization of entities into 10 ranks is conducted by qualifying the institutions from the letters A to J according to the budget level assigned to each.

15. Category A includes all entities whose budget for procurement of goods and services exceeds US\$89 million: the Social Security Office of Costa Rica (CCSS), the National Company of Energy and Light (CNFL), the National Highway Council (CONAVI), the National Institute of Insurance (INS), the Costa Rican Institute of Electricity (ICE) and the Costa Rican Petroleum Refinery (RECOPE). The Costa Rican Institute of Water and Sewage Systems belong to category C.

16. The following pie chart shows that six institutions absorb approximately three fourths (74.8%) of the procurement budget of the public sector. The remaining 25% of the State Apparatus's procurement is executed by entities or institutions whose budgets are lower than this amount. All institutions whose procurement budgets for goods and services falls below US\$300,000 a year are placed in the H, I, and J strata.



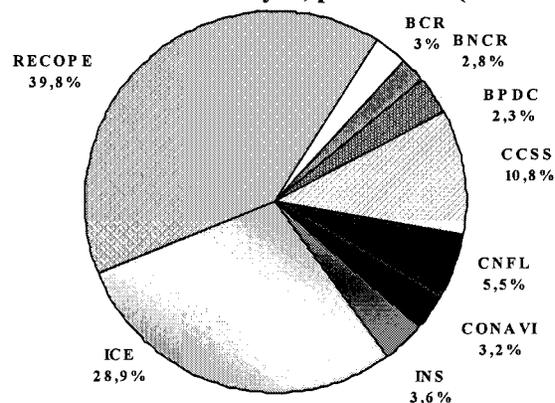
17. Only a few institutions are located in the B stratum with procurement budgets in excess of US\$60 million but less than US\$89 million, including the National Bank of Costa Rica (BNCR), The Bank of Costa Rica (BCR) and the Bank of the People and Communal Development (BPDC). All together, the 9 institutions located the A and B strata consume almost 79% of the total budget for procurement of goods and services in

<sup>7</sup> According to this methodology, if the contract amount requires a competitive tendering process, another procurement procedure will need to be followed in a government institution whose budget is larger.

the country. It is important to point out that all these entities correspond to decentralized institutions that are not regulated by the central administration.

18. Some of the 9 institutions in question account for a significantly higher percentage of procurement of goods. As shown in pie chart 6, almost 70% of the procurement for goods and services conducted by businesses whose budget exceeds US\$ 60 million are absorbed by two institutions: the Costa Rican Petroleum Refinery (RECOPE) and the Costa Rican Institute of Electricity (ICE). If we add to these two institutions the Costa Rican Social Security Office (CCSS), we have three institutions that consume more than 63% of the country's total budget for procurement of non-personal goods and services.

**Gráfico 6**  
**Sector Público: Distribución del Gasto en adquisición de Bienes y Servicios de los estratos A y B, por entidad (2003-2005)**



Fuente: Contraloría General de la República

19. Information on the budget data provided at the outset of each fiscal year by public institutions for procurement of goods and services provides the best possible estimate of the public procurement universe in Costa Rica. As was mentioned earlier in the report, no system currently exists in the country capable of integrating all public institutions, including the central government, decentralized institutions and municipalities and generating real statistics on who procures what, how, how much and from whom is procured. The Electronic Government Procurement System (COMPRARED) has the capacity to make available this kind of data to all the institutions in the system. Nevertheless, this system incorporates central government agencies only which account currently for only 6% of total procurement budget.<sup>8</sup>

20. The country lacks an adequate statistically-based mechanism that allows for the systematic, annual determination of which types of procurement procedures are the most utilized by public institutions when conducting procurement of goods and non-personal services. There exist a few isolated reports only, prepared by the Controller General's Office that provide interesting conclusions to this regards.

<sup>8</sup> Top management of COMPRARED have indicated that in addition to central government institutions, the Supreme Tribunal of Elections is also incorporated and it is hoped that more institutions will be included in the future.

## CHAPTER II THE LEGAL FRAMEWORK AND ITS APPLICATIONS

### I. Legal Framework

21. The legal basis of public procurement in Costa Rica can be found in Article 182 of the Political Constitution, the Procurement Law No. 7494 (LCA) and its Regulations (RLCA), the General Law of Work Concessions for Public Services No. 7762, the General Law of Public Administration No. 6227 and the Organic Law of the Controller General of the Republic No. 7428 and the Law on Financial Management and Public Budgets No. 8131 and its Regulations.

22. Some of the general features of the system are:

- LCA also applies to procurement that is conducted by autonomous and decentralized entities.
- LCA does not apply to the agreements entered into with international organizations. In practice however, this depends on different interpretations.
- Contracts that are for tax exemption purposes or which require the use of public services or the obtention of natural wealth or resources involving state property should be authorized by the Legislative Assembly.
- LCA promotes, as a fundamental ground,, the principles of efficiency, free competition and publicity.
- The LCA also establishes distinct methods for public contracting. The modality used depends on the nature of contracting, the classification stratum of the procurement entity, and the amount stipulated.

23. Principally, the following methods are used: (i) Public Bidding, (ii) Public Bidding internationally advertised, (iii) Bidding by registry, and (iv) Restricted Bidding. The LCA also contemplates the same procedures for procurement of non-consulting services and consultancy. The exemption procedures (direct contracting) are enumerated in article 2 of the LCA. The RLCA provides little information on the procedures to follow in these cases. Therefore, the Controller General's Office, through jurisprudence, provides a detailed explanation of the procedures to be followed in these exemption cases

24. Procurement of public works, services and consultancy is conducted through the methods described above according to the amount and type of technical or professional services and whether these are offered by individual or firms. The government entities have the obligation to submit a quarterly report to the Controller General's Office. This report provides information on procurement and contracting activities during this period (i.e. the procurement procedures started, acts to award contracts, the contractor's qualification, the object and amount of the contracts, the budget line item to which the expense is assigned, and other data of interest).

25. Finally, the LCA stipulates the types of objections recourse that can be used if an interested party believes that his or her rights have been infringed upon. The LCA contemplates three types of recourses: (i) objections, (ii) appeals; and (iii) overturning of

decision. The use of a particular type of recourse will depend on the issue, time involved and the body competent to review the case. Once the administrative route has been exhausted, the LCA indicates that the interested party should file in the justice system through a special process before the High Court for Administrative Disputes (Tribunal Superior for Administrative Contentions).

26. On the institutional front, LCA indicates that the National Procurement Office (*Proveduria Nacional*) is the technical and consulting body of the Ministry of Finance responsible for: (i) procedures related to all stages of procurement conducted by the Executive Branch that are not assigned to institutionalized procurement units; (ii) to provide guidance to public and private parties regarding administrative contracting, and (iii) evaluate procurement policies. Additionally, LCA establishes the creation of Institutionalized Procurement Units, introduces the possibility of utilizing electronic means for procurement, stipulates the creation of a Supplier Registry, mandates that each institution must publish its procurement plan in the Official Gazette, and introduces the modality of reverse auction as a procurement method.

## II. Analysis of Procedures and Practices in the Implementation of the LCA

27. ***Procedures at the organizational level.*** The LCA deconcentrates management of procurement in the ministries and assigns responsibility for policy and system supervision to the DGABCA and the CGR. Studies conducted by CGR indicate that no integral vision of the procurement process of public sector institutions currently exists. A weakness in the procurement system in Costa Rica lies in the considerable disarticulation that exists between the requirements established in these norms and the application procedures developed by the entities in charge of procurement even when said procedures are not in conflict with the LCA stipulations. In general, there is no integrated system for public procurement that captures strategic information for decision making. For example, there are few procedures and operations manuals that explain how the obligations and principles contained in the LCA and its regulations are applied within each organizational structure at an administrative level. Additionally, there are no guidelines that determine individual and organizational functions. Many of the current procedures have been developed more as a result of practices and habits than as a consequence of the use of a coherent and consistent instruction manual.

28. ***Excessive use of fractioning and direct contracting.*** A weakness that arises from the lack of uniform instruments for procurement is the fractioning of contracts (which leads to the use of non-public tendering procedures such as procurement by quotation) as well as direct contracting. Despite the fact that the LCA indicates that direct contracting should be used as an exception, it constitutes, according to studies conducted by CGR, a common procurement practice in many institutions. Although direct contracting may be backed by current norms, it is important to remember that the excessive use of this modality may result in fractionization as a means to avoid more complex tendering processes that have more requirements and formalities. Fragmentation directly affects the institution given that entities that procure in small amounts are generally unable to achieve better prices and take advantage of the scale economies that are associated with large

volume procurement. Additionally, abuse in direct contracting procedures leads to significant administrative burden because each procurement action is executed by an independent procedure.

29. **Procurement Planning.** All procurement requests drawn up within each entity are included in the Annual Operating Plan, which is in turn included in the Annual Procurement Plan. In both cases, the plans must be published timely in the Official Paper. Nevertheless, there are no standardized formats for goods requisitions or Procurement Plans. Procurement reports are presented directly to DGABCA or the Controller General's office. Public sector entities in Costa Rica are grouped in strata according to the budget amounts assigned to each and each stratum has set minimum and maximum amounts for the use of each procurement method (Public Bidding, Bidding by Registry, Restricted Bidding and Direct Contracting) as well as the threshold amount above which bidder appeals must be handled by CGR. CGR sets limits for each entity's procurement. If contracting amounts exceed this threshold, authorization must be secured prior to the procurement process.

30. In this way, a contract whose estimated price indicate that it should be tendered through National Competitive Bidding for a specific institution could be legally contracted through Bidding by Registry in another entity with a larger budget. It is clear that the methodologies included in the LCA are not applied uniformly to threshold amounts established throughout the public sector. Instead, each institution uses its own range to determine the methodology applicable to each contract.

31. This categorization of entities within 10 ranges (from A with the largest budget to J with the smallest budget) fails to incorporate an analysis of procurement capacity and is based solely on budget levels instead. No aggregate limits for the use of less formal methodologies are contemplated to prevent procurement fractionization, which, although considered an unacceptable practice by the LCA, is difficult to detect. As such, it is surprising that in 2003, ICE, which initiates few processes for significant amounts due to the nature of its contracting, has executed more than 25% of its budget through Direct Contracting.

32. **Official merchandise catalogue.** This is the official instrument that normalizes goods and services. It contains a basic description of merchandise and services to facilitate procurement and adequate storage. The Institutionalized Procurement Units of the Central Government Administration are obligated to use this catalogue and its coding system for procurement requests or requirements. The Merchandise Catalogue follows, in principle, the United Nation's Central Product Classification System (UNCPCS), and consists of a coding system (i.e. "class," sub-class," and "number") and a description of the most important characteristics of the merchandise and services. The "class" consists of the number assigned in the budget to the sub-item as defined in the classification system for National Budget Expenses, which groups goods and services according to type. According to the DGABCA, the evolution of this catalogue differs from the United Nation's catalogue to reflect the uses, particularities, and necessities of the public sector in Costa Rica. As such, international standards are not necessarily applied. This initiative needs to

be analyzed to ensure that the country fulfills its obligations under the Free Trade Agreement.

33. ***Tendering Notices.*** In Costa Rica, the only mandatory bidding advertisement is the Procurement Notice, which is published in the Official Paper “La Gaceta.” The publication process takes 8 days. Ads are also placed in the national media and occasionally in international sources although not obliged by law. This practice is most common in project execution units that have multilateral financing and will eventually be incorporated into the institutionalized procurement units of each entity. In the case of the central government, in addition to publication in La Gaceta, all tendering and contracting notices are published in COMPRARED. Autonomous entities do not utilize COMPRARED and most instead rely on their institutional portals.

34. ***Registry and qualification of suppliers.*** According to the LCA, the Institutionalized Procurement Units are competent to keep a supplier registry of suppliers and contractors that are interested in entering into contracts with the administration. The call for register is made annually. Suppliers accredit their information (individual or firms, nationality, powers of representatives, etc.) with these registries so that the Institution can categorize the business. The “Regulation for the Utilization of a Supplier Registry” (Decree No. 25113-H), regulates supplier participation in the registry by organizing the computerization of the administrative procurement process, up-dating requirements and supplier characteristics and facilitating decision making regarding future procurement opportunities.

35. This registry provides an overall view of the supplier given that it includes not only the information described above but also any “Resolution to Sanction” that has been applied. This is relevant data given that the Institutionalized Procurement Units must send reports on sanctions to the National Procurement Office (*Proveduría Nacional*) to supplement the information required by the Registry that is in charge of coordinating with CGR.

36. Registration with the National Procurement Office is conducted easily and quickly by filling out an “Inscription Format.” The parameters considered in the supplier qualification process are not specified in the LCA or in its Regulations and vary according to the nature of the contract. In general, there are two factors of importance: the volume of business and the number of years of experience. As such, the Registry guarantees neither the adequate selection of potential suppliers nor the uniformity of selection criteria amongst procurement agencies.

37. The international suppliers can register on-line as long as no national or international norms are vulnerated. The National Procurement Office is in charge of maintaining the information registry of suppliers and is responsible for the elaboration and management of the Official Merchandise Catalogue.

38. The DGBABCA, like each institutional procurement unit, has its own Supplier Registry and no information of any kind is exchanged between registries. In any case, autonomous and central registries in Costa Rica are used more as a source of contacts than

as certifiers of capacity. The LCA indicates that suppliers must be registered if they wish to enter into contracts with the state of Costa Rica; nevertheless, tenders submitted by enterprises or individuals that are not registered are not disqualified from the tendering process. Registration is permitted during the evaluation process and even posteriori of the contract award and prior to contract signing.

39. It is also important to note that no mechanisms exist to register the commitments assumed by the contractors at the time they are made. As such, the information in the registries indicates historical as opposed to residual or available capacity when the supplier is invited to submit a quote.

40. **Procurement documents.** There are no standardized bidding documents. In general, the procurement units have developed their own models, which contain the minimum requirements (general contracting conditions, technical specifications and terms of reference) to prepare quotes. Consequently, administrative practices vary from institution to institution, which impedes supplier participation in tendering procedures.

41. **Consultation and objections to bidding documents.** The LCA provides that potential suppliers must lodge any complaints regarding the bidding documents's content within 10 working days. These objections must be presented to the Legal Section of each entity (Objection before the Administration, for Restricted Bidding) or before the CGR (Objection before the CGR for Public Competitive Bidding and Bidding by Registry) depending on the estimated price of each contract. The CGR has 10 working days to resolve the complaint, period during which the procurement process is suspended. There is evidence that certain bidders make inappropriate use of this prerogative, which has prompted the CGR to present a "recurring issue bill" to discourage this practice and punish those that incur in inappropriate conduct. In the interim, CGR has made a compilation of the legal resolutions of the cases that most frequently arise in order to make immediate pronouncements based on similar past cases.

42. **Reception and opening of tenders.** The deadlines for preparing and presenting tenders depend on the contracting methods used and the nature of the contract. The public procedures (Public Competitive Bidding and Bidding by Registry) should meet the following deadlines as set by LCA:

- Construction or Concession of Public Works (normally Public Bidding): 25 working days
- Procurement of imported supplies (normally International Public Bidding): 20 working days and
- Procurement of market goods (Public Bidding or Bidding by Registry): 10 working days.

43. The opening of tenders is a public act that is open to both representatives of bidders and the general public. Access to information on the bids is also guaranteed, and available information can be photocopied by any interested party. The bids are read out loud and minutes are kept of the opening; bids are not evaluated during the opening process.

44. ***Evaluation of bids and awarding of contracts.*** Evaluation Commissions are set up but the formalities of the process depend on each entity. Nevertheless, the law requires the presence of the following: the Institutionalized Procurement Unit's Representative or Provider, the Head of the Administrative Unit making the request, the Legal Advisor, the Head Officer and any technical specialists required. The Regulation of Institutional Procurement Units of Central Administration stipulates the members of the Commission.

45. The evaluation parameters are explicitly described in the specification sheets. In general, the parameters are clear and the criterion is basically pass/no pass. Contracts are awarded to the bid that is most economically advantageous to the procurer; in other words, the criterion is which tender is lowest. The Contract Award Notice is published in La Gaceta, COMPRARED and other media if necessary.

46. ***Contract awards, resources and appeals.*** Once bid evaluation is concluded, the contract is awarded and a period of 10 working days is established so that tenderers can file complaints (appeals) concerning the contract award prior to Legalization before the CGR. The Table above shows that the amount of the contract determines which measures apply. Once 10 working days have passed, the right to appeal is lost. In the strictest sense, the bidders can present an Appeal to Revoke (presented before the Legal Section of the contracting entity) or an Appeal before the CGR. As is evident in the Table, the amount of the contract determines which measures apply. In general, appeals are presented at Public Bidding and Bidding by Registry while appeals to revoke are more common in Restricted Bidding and Direct Contracting.

47. If an appeal is presented before the CGR, a period of 10 working days is set to decide if the appeal is accepted or rejected (in the year 2003, 52% of the appeals received were rejected) and another 40 working days are stipulated to resolve the matter. This period may be extended by 20 days.

48. ***Legalization before the CGR.*** Once the contract has been awarded and signed and if the amount so requires, the file is sent to CGR, which has no more than 30 working days to expedite a signature. If no decision is made within the time period mentioned, positive silence applies (meaning the contract is considered approved).

### III. Conclusions and Recommendations

49. ***Reform of the Law.*** Although the legal framework for public procurement in Costa Rica appears modern and comprehensive, it is clear that improvements can be made. Since the approval of the LCA, considerable delays in procurement and purchasing processes have arisen primarily due to differences in interpretation of this law.

50. This report has identified the weaknesses in the legal system that require attention:

- The lack of rules to regulate or cover the gaps of the LCA and which provide uniform normative criteria for both central and decentralized levels.
- The need to simplify contract modalities.

- The need to develop a specific regime for contracting services and consultancy.
- The need to simplify and rationalize the supervision and approval stages that draw out procedures unnecessarily.
- The need to reduce the time it takes for institutions to make decisions during different stages in the process.
- Legal recourse procedures are oriented to the rights of bidders and do not take administrative needs for efficiency and effectiveness into account.

51. Given the priorities of the Legislative Assembly, the effort to improve the LCA could include the issuance of regulations and directives by the Executive Branch in addition to the development and distribution of standardized procurement documents and tools.

52. **Registry.** Although the Registry is not restricted (it can accept tenders from bidders that have not been invited to participate), it is still not a very reliable tool and should be unified to serve the whole system. It is important to take into account that one of the reform articles to the LCA proposed by the CGR stipulates that only the tenders placed by bidders invited to participate in the process should be evaluated. As such, the registry would be preponderant and restrictive. The registry procedures for contractors and providers are complex and suffer from a lack of coordination between agencies. The current norm indicates that bidders do not have to be registered to participate in tenders. As such, it may be preferable to use the registry as a source of information and avoid making registration mandatory for the sake of fulfilling international practices following the Banks' procurement policies.

53. **Standardized procedures.** In order to guarantee increased efficiency in procedures, efforts must be made to make contracting practices more uniform, beginning with the use of standardized documents.

### CHAPTER III INSTITUTIONAL FRAMEWORK

#### I. The Normative Function for Central Government Procurement (DGABCA)

54. Central Government procurement (ministries and adjoined entities) is conducted under the supervision and direction of the General Office for the Administration of Administrative Goods and Services (DGABCA), which is a dependency of the Ministry of Finance. The DGABCA replaced the former National Procurement Office, but its functions are substantially different from those of its predecessor.

55. The DGABCA, according to the stipulations of the Administrative Financial Law, Law No. 8131, is the oversight body of the administrative system for goods and administrative procurement and exercises a normative role (guidelines, regulations, policies and information systems). It also supervises central government agencies, which, from 2002 on, are responsible for procuring through institutionalized procurement units. Municipalities also have their own procurement units.

56. The DGABCA has set a strategy for the period between 2002 and 2006 that includes four priority actions: (i) to consolidate the organizational structure of the Head Office as the supervisory body of the system and promote the development and organization of Institutionalized Procurement Units and Areas for the Administration of Goods and Central Administration; (ii) To drive integrated, efficient and transparent information systems to support administration in the areas of administrative procurement and Central Administration (COMPRARED, SIGAF, SIBINET); (iii) To guarantee that the system is equipped with the necessary norms and technical assistance to fulfill the objectives of and provide direction to the system, guaranteeing the public interest and; (iv) Ensure the adequate execution of contracting processes, the storage, distribution or flow of goods from the institutionalized procurement units and the areas of administration of the central administration. The most significant progress has been in the area of information systems. COMPRARED, whose prime objective is to propitiate the transparency, efficiency, effectiveness and integration of procurement management at the State level, was initiated in 2001 by the Ministry of Health.

57. The DGABCA is also developing a single catalogue of goods (merchandise catalogue) for the purpose of typifying and classifying contracting and expenses. For the time being, it is using the United Nation's nomenclature. Once a single expense classifying system has been developed, the Controller General will ensure that it is used throughout the public sector, including decentralized agencies. Other initiatives include an up-dating of the Registry of Restricted Bidders and the exchange of said information with the State Suppliers'. Additionally, all of the annual procurement plans should be published in COMPRARED.

## II. The External Control Function (Controller General of the Republic)<sup>9</sup>

58. The Controller General of the Republic (CGR) of Costa Rica is a technical entity that aids the Legislative Assembly in the oversight of all of the entities and bodies that comprise Public Finance; it is functionally and administratively independent. With regard to procurement, the CGR exercises two controls:

### *Previous Control*

59. The CGR has attributions to exercise ex-ante control over the administration of public finance. Thirty-nine percent (39%) of CGR's activities correspond to the review and approval of public finance budgets. The principal functions of the ex-ante control system are:

- *Control of budget availability prior to the Administration's decision to contract:* the CGR examines and approves or disapproves, either totally or partially, the budgets of entities or bodies belonging to Public Finance.
- *Authorization for contracting:* once budget availability has been verified, the CGR gives the go ahead to the procurement plans of each entity. In addition, the CGR must approve any exception to the utilization of procurement methods that are different from approved methods, for example in the case of direct or emergency contracting.
- *Appeals recourses to object procurement documents:* to resolve objections filed by potential bidders to the legal/commercial or technical conditions of the bidding requirement.
- *Appeals concerning contract awards:* once the award has been communicated, the CGR must hear any appeals. The decision taken by the CGR is final and cannot be redirected through administrative channels.
- *Contract endorsement:* the Controller should approve and verify the conformity of the contracts entered into by the administration within the period stipulated, which may not exceed 30 working days. The non-approval of a contract will impede the legal validity of the act or contract and its execution will be prohibited and considered null and void. The competences of the Controller General's Office will not be suspended during the period set for the exercise of the same. Nevertheless, in the case that the Controller fails to resolve or pronounce within the legal period assigned or as established according to regulations regarding appeals to public tendering, the award act will be considered valid and shall stand.

### *Ex-Post Control*

60. In addition to the control functions discussed previously, the CGR evaluates financial-administrative transactions through audits of the entities:

- *Operational:* related to operative audits that the CGR conducts to observe procurement entities' compliance with current legislation and

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<sup>9</sup> To maintain thematic consistency, the CPAR team suggests reading this section along with the specific areas of analysis and the recommendations in the area of external control, including those referring to the effective operation of the CGR, as elaborated by the CFAA. See CFAA, June of 2005, WB-IDB, page 36.

- *Evaluation*: analyzes the results of administrative contract management by prioritizing the state's co-existence criteria. When necessary, The CGR can conduct audits, institute administrative summary or special investigations, can establish policies, dictate regulation, fiscalize internal audits and order external audits of all bodies in the areas of its competence and involving passive subjects within the realm of Public Finance.
- *Advisory*: the CGR, amongst its various functions, must respond to requests for information from parliamentary bodies and private subjects. The rulings pronounced by the Controller General's Office are binding and irrefutable with the exception of those related to administrative contracting, which are considered definitive administrative acts.

### ***Organization, Resources and Performance***

61 The CGR distributes its operative functions into three principal divisions:

- *Fiscalization of Operative and Evaluation applications*, which is geared towards evaluating the economic and social impact of the administration of public resources, the review and approval of public sector budgets, and the review of budget execution in order to prepare and present periodic reports on the same, execute external audits and investigate complaints;
- *Legal Advisory*, mainly responsible for the legal functions of justice administration in the CGR's realm of activities by determining civil and administrative responsibilities relative to the improper conduct of public employees and claims stemming from administrative contracting; and
- *Institutional Development*, which is in charge of the functions of supervisory body for internal control and is responsible for a set of support and operative activities.

62. The Fiscalization Division executes the majority of CGR's constitutional functions. In 2003, this division executed approximately 50% of CGR's budget. Its operations provide support for budget reviews and approvals, the review of budget execution, special studies and audits in general. The legal division and the division for institutional development dedicate a large percentage of their resources to the clearances of administrative contracting and corresponding legal issues. These Divisions execute 29% of the budget.

63. In 2003, the CGR conducted fiscalization actions for a total amount of C\$13.448.539.5 million, of which 39% corresponded to ex-ante Control and 61% to ex-post control. In fact, 66% of the amounts subject to prior control correspond to budget reviews for approval purposes and 34% corresponds to contracting clearances. In the case of ex-post control, 92% of the values reviewed were related to "Special Studies," (investigation of complaints and guidance provided to the AL), 6.2% for Operational Audits, and the remaining 0.4% to Financial and Budget Auditing.

64. The controller body conducts process control at three stages: ex-ante, during, and ex-post. Many argue that this control system adversely affects the celerity with which

administrative procurement should be conducted. In 2004, the CGR fiscalized efforts for a total of C\$ 14.444.979,2 million, of which 40% corresponded to ex-ante control and 60% to ex-post control. Additionally, 65% of the amounts examined through ex-ante control corresponded to requests for approval and 35% was related to contracting clearances.

65. The CGR's Annual Report for 2003 indicates that more objections were raised regarding the system for procurement of goods and non-personal services in that year than in years past. As such, various bills have been presented that seek to grant greater efficiency and efficacy to manage procurement processes.<sup>10</sup>

66. The analysis of CGR's resolutions (as found in the Annual Report) indicates that 311 resolutions on appeals related to administrative contracting were issued in 2003, of which 168 (meaning 54.01%) were ad portas denials. Of these resolutions, 89 were for simple matters related to amounts, ex temporal issues, acts that are considered null and void and acts that nullify a procedure; 65% was associated with cases in which the office, within a period of only 20 days, engaged in a legal, technical and/or jurisprudence efforts to reject ad portas without delving further into the matter.

67. The annual report concludes that although the global budget for procurement of goods and services in the public sector in 2003 was ¢1.361.332,7 (in billions), in terms of appeals, only 10.51% of the same was fiscalized of which 9.39% led to a ruling for an award and 1.12 % were annulled. It is important to note that the total figure for fiscalization in 2002 was 12.09% for 2001 and 15.26% for 2001.

68. The aforementioned functions, amongst others, conflict with the equally constitutional functions of ex-post control of public finance resource administration as well as with their attributions to issue norms for said purposes, to carry out investigations of supposed irregular conducts on the part of public employees, and to impose and order sanctions.

### **III. Autonomous Institutions**

69. Autonomous institutions, like the central government, operate under the precepts of the LCA and its regulations but are financially independent of the DGABCA and utilize their own statutes and internal norms. The institutions in this category include: The Costa

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<sup>10</sup> Currently, the Legislative Assembly is working on various bills related to reforms of the Law of Administrative Procurement, including:

- File 15555. Law of Reform of articles 16, 32, and 80 second paragraph; 84, 86, 89, 91, 92 section D) of the Law of Administrative Contracting N° 7494 of May 02, 1995. This project is scheduled for the Legislative Session as No.48 on the docket. This constitutes the first debate with the affirmative opinion of the majority.
- File 15583. Reforms of the General Law of Administrative Contracting. This Project is in the Commission of Legal Affairs; it is No.11 on the docket and is in the investigative stage.
- File 15716. Reform of the first paragraph and section c) of article 100 of the Law of Administrative Contracting, Law 7494 of May 02, 1995 and the repeal of Law 8022 of Sept. 01, 2000.

Rican Institute of Water and Sewage Systems (AyA), the Social Security Office of Costa Rica (CCSS), the National Council on Production (CNP), the National Company of Energy and Light (CNFL), the Costa Rican Institute of Electricity (ICE), the Costa Rican Institute of Tourism (ICT), the National Institute of Cooperative Development (INFOCOOP), the National Institute of Insurance (INS), the Institute of Development and Municipal Consultancy (IFAM), the National Institute of Statistics and Census (INEC), The National Institute for Learning (INA), and the Costa Rican Petroleum Refinery (RECOPE).

70. Autonomous institutions have a degree of flexibility to manage their budgets and internal administration areas (including personnel) but their objectives and organization are different. Several of these institutions receive significant funds from the government; some are earmarked to receive special taxes; and yet others are financed primarily with money generated from the services they offer. Due to the public nature of autonomous institutions, the government exercises its control function in the areas of (i) investment, debt and budget; (ii) fees and prices and (iii) procurement and auditing. At least six agencies are responsible for supervising and controlling autonomous entities, including the Ministry of Finance, the MIDEPLAN, the Central Bank, the Budget Authority, the Controller General's office and the Superintendence of Public Services.

71. In order to deepen the analysis of organizational aspects related to procurement, 3 institutions were examined: The Costa Rican Social Security Office (CCSS), the Costa Rican Institute of Electricity (ICE), and the National Institute of Aqueducts and Sewage Systems (Aya), which together with RECOPE represent approximately one third of the state budget for expenses and procurement. The study confirmed the existence of a new challenge for the procurement sector: to review and modernize policies, procedures and ensure the best possible use of information technology.

72. **Organization and structure.** All three institutions tend to centralize procurement according to the framework provided by the LCA, its regulations, the resolutions of the Controller General's Office, the rulings of the Fourth Court and the internal regulations of each institution. Contracting with these institutions is open but is complex and costly for tenderers.

73. With the exception of the LCA and the role of the Controller General' Office, there is no common framework that ensures that autonomous institutions operate coherently when engaging in public procurement and contracting. As such, tenderers must deal with the fact that different state institutions require different documentation when procuring the same product or service.

74. **Processes.** Procurement procedures for goods or services are governed by the financial thresholds set for the specific category or stratum to which the responsible agency is assigned and are not subjected to a risk analysis of the procurement item or project. An agency's authority to contract is determined by the stratum assigned according to its procurement budget for goods and non-personal services and is not conditioned by the agency's institutional capacity assessment to procure or contract.

75. Institutions have the autonomy to organize tendering if and only if they fulfill the LCA and its regulations. As such, each institution issues its own internal regulations to assign responsibilities for different functions, to identify and define the procurement item and prepare and approve bidding documents (Bases), conduct the bidding process, evaluate bids and recommend a course of action for awards, and award and sign the contract once it has been cleared by the Controller General's Office, where applicable.

76. These internal regulations often contribute to delays and inefficient decisions. A seemingly endless number of individuals and commissions often participate, which makes accountability difficult to determine. For example, CCSS's internal process for simplified procurement of medicines includes 19 steps that must be followed over 169 days beginning with the date the purchase order was issued to the moment that the product enters the storage facility.

77. **Policies.** The procurement policy, similar to other policies in the public sector, is focused on preventing corruption and ensuring that public employees act with probity. This policy, however, is based more on detailed regulation and an excess of controls than on promoting ethics values or virtues. The excess of regulation and controls threatens efficiency given that it imposes significant transaction costs. It also limits the flexibility needed to achieve better options in terms of price and quality and hampers the achievement of certain social objectives. The public employees' culture seems to be centered on not taking risks, following the rules and resisting change. All of the aforementioned makes for a system that is complex, cumbersome and costly to administer.

78. A brief analysis by the institutions indicates that the majority of transactions correspond to large volume, low-value items that demand a high proportion of administrative resources despite the fact that their value is minimal in relation to the total procurement expense.

79. For example, the CCSS, conducts C\$33,200 million in procurement operations in the central ambit (excluding the procurement of medicines regulated in Law 6914), of which 18-20% represent 60% of the number of transactions. In a similar fashion, 40% of procurement expense corresponds to 90% of the number of transactions and in ICE, 86% of the transactions consume only 12% of procurement spending.

80. **Performance indicators.** The main indicator that the institutions utilize to measure efficiency in procurement processes is the time that transpires between the submission of a procurement request and the issuance of a procurement order. Nevertheless, this indicator is extremely variable even within the same institution. This is due to the fact that the time dedicated to reviewing the application depends on the complexity of the procurement request. For this reason, international practice defines this indicator as the period that transpires between the publication of a tender notification and the signing of a contract or the issuance of a procurement order. The step-by-step breakdown of process

duration shown in the following table indicates that the average number of days it takes to analyze and award tenders is significant.

### AVERAGE DURATION OF BIDDING PROCEDURES IN DAYS

#### PUBLIC BIDDING

INSTITUTION	PLANNING PHASE	SUBMISSION OF BIDS	EVALUATION AND AWARDED	DRAFTING OF CONTRACTS	SENT FOR APPROVAL	CGR CLEARANCE	ISSUING OF P.O.	TOTAL
AYA	50	47	127	55	16	17	18	330
ICE	114	53	120	69	32	18	10	416
CCSS	34	50	145	105	21	27	49*	431

#### DIRECT CONTRACTING

INSTITUTION	PLANNING PHASE	SUBMISSION OF BIDS	EVALUATION AND AWARDED	DRAFTING OF CONTRACTS	SENT FOR APPROVAL	CGR CLEARANCE	ISSUING OF P.O.	TOTAL
AYA	22	4	12	NA	NA	NA	8	46
ICE	48	7	12	NA	NA	NA	20	87
CCSS	37	31	51	NA	NA	NA	23	142

\*includes reception

81. The majority of the institutions conduct periodic internal evaluations utilizing type methodologies (FODA- Strengths, Opportunities, Weaknesses and Threats), but these evaluations are limited to processes geared towards complying with the LCA. These evaluations could be exploited to identify best practices and develop a model for other institutions.

82. **Human Resources.** The three institutions studied are conscious of the importance that technical expertise and ethics play in procurement staff's performance and conduct and are aware of the importance of maintaining their motivation. This means that institutions must maintain adequate training programs for their employees and management teams, which must be accompanied by policies aimed at ensuring personnel's welfare.

83. In this respect, both the CCSS and the ICE, which are not part of the civil service, have a degree of flexibility to contract personnel. The ICE's initiative to design and implement an administrative procurement program made up of 13 training modules is noteworthy. This program lasts approximately a year and trains employees from the National Procurement Office, administrative assistants at the middle management levels,

attorneys from the Administrative Contracting Office and employees of the Auditing Office. Currently, close to 30 public employees are in the last stages of a master's program in administration with a focus on administrative contracting offered through an agreement between the Government of Costa Rica and the Universidad Fidelitas.

84. The ICE has also focused on providing incentives to staff through an outstanding salary and benefit policy applied at the public sector level (the average employee salary is the equivalent of approximately US\$1,300). It is evident that the individuals involved in administrative contracting are highly committed to conducting processes efficiently.

#### **IV. Conclusions and recommendations**

85. *Supervisory body.* Although DGBCA's actions are moving in the right direction, it would be a good idea to establish a consulting supervisory body for the entire public sector to provide leadership and oversee the strategic vision of the contracting system. In order to do this, it will be necessary to pass legal reforms that will allow the Head Office to fulfill this objective. This body could facilitate the work of institutional procurement units with regard to regulating, reviewing and monitoring the planning and execution of contracts. It could also help design models for standardized tendering documents for goods, works, and services and could contribute to the development of common performance indicators to measure output, effectiveness and costs of transactions.

86. The creation of a central government organization responsible for providing strategic direction to the public procurement system and pro high level assistance to all government entities, including autonomous institutions, would allow to reduce the system's fragmentation in the system which is primarily the result of the heterogeneity of procurement practices and documents. This organization should not have authority over matters that belong exclusively to the institutions' domain, and instead should focus on promoting best practices in procurement, including the preparation of manuals and standardized documents including staff training and ensuring system integration and coordination.

87. An option would be to strengthen the DGABCA and widen its range of action. The most significant limitation that DGABCA faces is that it lacks the support necessary to fulfill its current roles (principally as far as human resources, finance and policy aspects) and the fact that the LCA limits its range of action in the central government. The DGABCA's activities have concentrated primarily on the development of COMPRARED, which has only been implemented in the central government to date. As such, the autonomous institutions, leaving out the autonomous institutions which represent as a whole the highest percentage of the budget allocated for public procurement.

88. In order to truly assume its role as a consulting supervisory body for the entire public sector, the DGABCA needs to cover the following areas:

Regulatory role:

- To take on both the leading and supervision roles of the strategic vision of the global procurement system given that administrative contracting represents an important part of the budget to fulfill institutional objectives and goals.
- To formulate and propose common policies and procedures for the entire public sector. It is necessary to reduce the disadvantages caused by the segmentation of public purchases in Costa Rica. The DGABCA should take on the initiative to discuss and coordinate with autonomous institutions the policies and procedures for common use. It should also incorporate best practices within its guidelines and use the potential of COMPRARED to disseminate information on these initiatives throughout the public sector.
- To draw up common indicators to measure performance, effectiveness and transaction costs of Processes.

Operational Role:

- To develop models for standard bidding documents (goods, works and non-consultant services) and documents for requests for proposals from consultant firms by benefiting from the experience of the Chambers of Construction, Commerce, Industry, Science and Technology, Consultants and the Federated Association of Engineers and Architects.
- To collaborate with the institutionalized procurement units in activities aimed to regulate, review and monitor procurement planning and execution. Although the Controller General's Office takes also part of the responsibility in this initiative, the goal would be for DGABCA to participate actively in planning and consultancy and that the CGR would concentrate on ex-post controls.
- Although the DGABCA has conducted some training courses since 2002, the majority of them was for specific purposes and was not part of a strategic plan for formal training directed at ensuring the certification or accreditation of staff in charge of administrative procurement.
- To have qualified personnel trained in all relevant procurement disciplines to provide effective leadership

89. Another option to consider would be to create a committee for procedure simplification and system modernization comprised of the DGABCA, the Controller General's Office and the most relevant autonomous entities. The purpose would be to identify measures aimed to make more efficient use of time and reducing the administrative cost of registration, identify needs for improvement of planning schemes and performance of bid evaluation processes, and contract awards.

90. **External control.** The Controller General's Office should give consideration to the value added of its technical opinions as it does not seem to have staff with the skills required to effectively assess issues of different nature related to bid evaluation processes and contract awards. Expert control in specialized areas of expertise should be left to the technical professionals in each government institution. The Controller General's Office has drafted a proposal for the reform of the LCA that proposes to exert ex-ante control functions only in public competitive biddings where the chances of protests associated with complex, higher value transactions to arise is greatest. As such, the thresholds assigned to public biddings, as a procurement method, should be revised for clarity. The

setting up of thresholds for both the procurement method to select and the conditions for prior reviews to perform should lie on the design matrixes based on risk analysis, the public institutions' capacity and the estimated value of the procurement.

91. Although the CGR is improving its fiscalization system from a technical and technological point of view, the combined focus on ex-ante/ex-post control should be revisited. The restrictions and conflicts stemming from its legal abilities which require a high percentage of concentration on ex-ante control and on reviews of specialized studies dealing with management of claims, cause delays in bidding processes which otherwise should be considered as part of primary ex-post control actions. Under current conditions, except for compliance with budget legal requirements, it does not seem appropriate to depend on the efforts of the Controller's office to lend reliability to accountability actions and transparency to public administration.

92. The modernization process should be reinforced by adapting the fiscalization system to complement the LOCGR reform process in order to ensure its separation from ex-ante control functions and its financial independence to define and approve its budget. This process should also ensure that the system is endowed with the human, technical and technological resources to generate predicted results. At the same time, the CGR will benefit from the implementation of a management control system based on indicators to facilitate supervision of operating and administrating tasks. This system will constitute a reliable information base upon which CGR can evaluate its performance and be held accountable for its actions.

93. **Internal Control.** The comments received indicate some weaknesses in the internal audits, whose effectiveness is impeded by the ex-ante control that the Controller's Office exercises and the emphasis that the respective institution's board of directors places on the audit itself. If this function is strengthened in the institutions, it will considerably facilitate the role of the Controller's Office in ex-post control.

94. **Change in the culture of control.** The institutions evaluated have well qualified and educated personnel who should be open to a change in culture based more on principles than on detailed rules. In essence, more trust must be placed in these individuals. A change of this nature should generate more opportunities to make the procurement system more agile and reduce transaction costs.

95. **Strategic Planning.** These institutions should consider the benefits that can be reaped from adding low risk and low cost items and should conduct procurement through framework contracts. This could allow for better prices, shorten the time spent by procurement officials on specific tasks and reduce the administrative cost of payments given that billing will be reduced.

96. **Performance Indicators.** The objective of using indicators is to allow institutions to monitor their behavior in management of procurement and compare it with that of other institutions. In both cases, it is important that each institution use the same methodology to ensure the consistency of comparisons. Another task would be to include the new

functions proposed by the DGABCA. It would also be recommendable to develop indicators that permit: i) an analysis of the true transaction costs of procurement; ii) measure the progress made in economizing efforts relative to procurement; and iii) to evaluate the abilities and behavior of contractors and supplier.

97. **Capacity Development.** Although certifications have been granted to staff who participates in training activities provided by DGABCA, it would be a good idea to analyze the possibility of entering into an agreement with a higher learning institution for the purpose of setting up a formal training program in public procurement based on the public sector needs. For example, the agreement with the Fidelitas University could be used as a springboard for a training program for public procurement in the international context that is similar to those that the World Bank supports in Europe (ILO) and Africa.

## CHAPTER IV INCENTIVES AND EFFORTS FOR THE PROCUREMENT SYSTEM REFORM

98. Over the last few years new incentives have arisen to strengthen and expand the potential of the current contracting system. This chapter concentrates on two of these incentives: contracting through e-procurement and (ii) international agreements on government purchases.

### I. Public Contracting through E-Procurement<sup>11</sup>

99. Costa Rica has made significant progress in adopting an electronic system for government procurement (e-GP) and the new version that is about to be launched has enormously increased its functionality. Costa Rica has followed best practices to increase transparency and participation in public sector contracting processes. The fact that tenderers can obtain tendering documents at no cost is a big step in the right direction.

100. Although there is one website that publishes information on state contracting, there is a need to increase dissemination and coverage for other entities outside the central government. The Regulation of the Financial Administration Law of the Republic and Public Budgets (No. 8131) establishes the obligatory use of all systems that the DGABCA puts forth for the fulfillment of the objectives of public administration. COMPRARED, which to date only includes the central government, is amongst these systems.

101. Based on an analysis of the country's state of preparation to develop e-GP derived from a self-evaluation conducted by government employees and the analysis of experts from the Banks, Costa Rica has made significant progress in adopting best international practices. COMPRARED's main objectives are transparency and efficiency (savings); nevertheless, no quantitative or qualitative goals have been set for these objectives. The new version of COMPRARED seems to be compatible with the guide map proposed by the IDB and the WB. An in-depth analysis should be conducted to determine the system's ability to handle operations financed by international institutions.

102. The DGABCA has led COMPRARED's development and operation but fragmentation in the public sector has led to a situation where several entities have begun to develop their own systems without guidance from the Ministry of Finance. These systems currently run parallel to COMPRARED. This fragmentation limits COMPRARED's progress and reduces the potential benefits that can be derived from e-GP.

103. DGABCA's plans to introduce digital signatures and certification are a key step in the e-GP development process. This area requires more analysis and thought given that it has implications for the goods and services offered by international suppliers and also affects the fulfillment of the conditions set by free trade agreements such as the DR-

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<sup>11</sup> This section is a synthesis of the progress report on e-government procurement included in Annex V.

CAFTA. COMPRARED has adopted the UNSPSC as a basic coding system for goods and services, a decision that is aligned with best international practices. In general, the development of standards is limited, and no policy framework or mechanisms for joint efforts with the government are in place. A registry of suppliers exists, but it is not standardized given that it works in parallel with other non-interconnected registries operated by a number of public sector entities.

## II. International Agreements on Government Procurement

104. The international treaties to which Costa Rica subscribes represent the second (although frequently ignored) incentive to strengthening the contracting system.

105. Currently, Costa Rica is a member of four free trade agreements: CR-Mexico (1994), CR-Republica Dominicana (2002), CR-Chile (2002) y CR-Canada (2004). Additionally, the government is in the process of granting legislative approval for two other agreements: the CR-CARICOM and the Free Trade Agreement between Central America, the United States and the Dominican Republic (DR-CAFTA).<sup>12</sup> Of these agreements, DR-CAFTA will have the greatest impact on contracting issues.<sup>13</sup>

106. Chapter 9 of the DR-CAFTA on government purchases aims to determine the assurances that Parties must provide to goods and services suppliers, who are nationals from other member countries of the said agreement, when conducting public procurement processes. In this sense, this chapter will facilitate the: (i) consolidation of the different principles and procedures of public procurement at the national level and, (ii) the modernization of all national practices that in one way or another impede the participation of foreign suppliers in government procurement.

107. DR-CAFTA establishes specific obligations for the entities registered on the Costa Rican positive list and accepts the application of only those procedures and laws that are consistent with its requirements. The treaty stipulates the obligation for the Parties to apply the principle of national handling of foreign goods, services, and suppliers from other member countries of the treaty and the process by which the origin of goods will be determined; prohibits the application of special compensatory conditions; and also specifies that no measures relative to customs tariffs or other fees or measures relative to imports, other than those measures which specifically regulate public procurement will be applied.

108. Another feature of DR-CAFTA is its multilateral application nature. The treaty's public procurement provisions treat the merchandise, services and suppliers from other Central American countries or the Dominican Republic in the same way as those coming from the United States. Regardless, the agreement stipulates different coverage for

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<sup>12</sup> For a more in-depth study of the DR-CAFTA results in other areas, see the Explanatory Document of the Free Trade Agreement between Central America, the United States and the Dominican Republic published by the Ministry of Foreign Trade of Costa Rica in 2004 (also available at [www.comex.go.cr](http://www.comex.go.cr)).

<sup>13</sup> Over the last few years, nearly 50% of Costa Rica's imports and exports have been linked to the US market. Additionally, nearly 60% of the direct foreign investment that has been made in Costa Rica originated in the US.

different countries. In the case of the US, the chapter applies only to the purchases of public entities covered by the treaty that exceed the established thresholds while the coverage for Central American countries is much more extensive due to the fact that it does not exclude government entities nor establishes thresholds at all.

109. The DR-CAFTA incorporates specific commitments regarding market access (foreign suppliers of goods and services should be treated in the same way as national suppliers). The DR-CAFTA's scope is limited to the entities listed in its tables and includes central, local and decentralized entities wherever national budget funding applies (which primarily affect the health and construction sectors). Unless otherwise specified, the DR-CAFTA covers all the subordinate bodies on these lists.

110. Nevertheless, the DR-CAFTA incorporates dispositions that establish different coverages for different countries. As such, the treaty sets thresholds to delimit coverage between Central American countries, the Dominican Republic and the US while no thresholds are set for contracting with Central American countries or that conducted between said countries and the Dominican Republic (given that coverage is more extensive). With regard to the coverage between the United States and each Central American country, the thresholds applicable to Central American countries will be double that of the thresholds applicable to US entities during the three year period directly following the date on which the treaty comes into effect. After this period, the thresholds will be equalized.

111. The DR-CAFTA's coverage extends to national, provincial and municipal levels and includes autonomous entities and state-run businesses. The applicable thresholds are:

- US\$58.550 for goods and services and US\$ US \$6.725.000 for construction services at the central government level.
- US\$477.000 for goods and services and US \$6.725.000 for construction services at the sub-central government level.
- US\$250.000 for goods and services and US \$6.725.000 for construction services for decentralized entities.

112. To determine DR-CAFTA's effects on supplier access, one must analyze the list of entities covered according to the budgeted expenses for goods and services for public entities in Costa Rica. It is clear that no thresholds exist for contracting between Central American countries or for dealings between these countries and the Dominican Republic; as such, coverage is virtually complete. This is not the case however with the United States, given that the thresholds are set in combination with a positive list focus to determine the entities to which the treaty applies; as such, the real percentage of contracting covered by the treaty is in fact limited.

113. An analysis of the percentage of the budget used for the procurement of goods and services that was included in the coverage with the United States shows that of the 9 institutions in the A and B strata, only the ICE and the CCSS are on Costa Rica's positive list. The other seven institutions in these strata, which account for more than 54% of the

budget, are not covered by the treaty with the US but are contemplated in the agreement with the other countries.

### III. Conclusions and Recommendations

114. ***Strategic plan for a COMPRARED.*** Despite the fact that important progress has been made, there is currently no integral strategic plan or common vision on the e-GP model that should be used in Costa Rica and how the model chosen should be implemented. This integral plan should identify, amongst other aspects, the key points necessary to implement successful and sustainable e-GP solutions. The plan must also work to consolidate all of public sector entities and the autonomous bodies that have yet to be included in a system and which represent the largest share of the procurement budget in the country.

115. Amongst other aspects, the strategic plan must take into consideration the following factors, all of which have the potential to block initiatives:

- The fragmentation of e-GP initiatives and the lack of coordination between the central government and other public sector entities constitute one of the main risks. COMPRARED currently handles only a fraction of the total procurement budget. If alternatives and strategies are adopted by different authorities simultaneously, the results may be negative for the government, suppliers and economic development.
- The lack of a coordinated strategic plan means that many of the aspects that will be necessary in subsequent stages of e-GP development, all of which entail risk and are complex, will not be implemented. It is evident that the system lacks planning to guide simultaneous and consolidated progress.
- The adoption of reverse auctions (gavel auctions) -foreseen for the short term- would encompass only 15% of the total public procurement for the public sector. In the long term, the use of this mechanism will generate negative impacts for the private sector, sectorial development and prices unless an in-depth knowledge -not yet available- of the market and suppliers' economy behavior is developed.
- The use of digital signatures and certification has yet to be successfully implemented in all of the existing e-GP systems. This strategy should include an in-depth analysis of potential risks in order to avoid making errors and incurring unnecessary costs.

116. ***Consistency between the national normative framework and the DR-CAFTA.*** A comparative analysis leads us to the conclusion that total compatibility exists between the regulations established and the legal framework of Costa Rica as well as the normative dispositions of the DR-CAFTA. The DR-CAFTA introduces no normative changes regarding public contracting in the country, but instead reinforces the current legal regime on administrative contracting. Annex III- A includes a detailed analysis of the concordance between Costa Rica's legal framework and the dispositions of DR-CAFTA.

117. Although Costa Rican legislation is in accordance with DR-CAFTA's requirements, it is necessary to improve certain administrative practices to guarantee the full application of the principles of national coverage, publicity and transparency. The

work in these areas undoubtedly signifies an important challenge for public administration in the country. Costa Rica has developed some systems of publicity and transparency- including COMPRARED- that have significant potential. However, the systems fail to incorporate all institutions, and such it is difficult to fully capture the dimensions of each in the realm of public contracting.

## CHAPTER V PROCUREMENT PERFORMANCE IN IADB AND WB PROJECTS

118. This section studies procurement performance in Costa Rica in projects financed by the A-WB that use standard documents to report on execution, performance audits, and project supervision. It also includes ex-post review and an evaluation of institutional capacity.

119. *Profile of the IDB portfolio.* The IADB's portfolio in Costa Rica includes net commitments for \$592 million and a non-reimbursable portfolio for US\$204 million to February of 2004. The portfolio consists of 10 projects to December of 2002, of which four represent 29% of the amount that has yet to be released, which was approved for the period from 2000-2002. The sectorial composition of the portfolio is distributed in the energy sectors (57%), modernization of the state apparatus (26%), health and education (11%), agriculture (5%) and water and sewage (1%). The technical cooperation portfolio consists of 25 operations to support the Bank's strategy in areas such as agricultural development, commerce, infrastructure, microbusinesses, and human capital. Additionally, 2 small projects, each oriented towards microbusiness development, are currently underway. The FOMIN portfolio is made up of 13 projects for a total amount of US\$ 6.8 million, 4 of which are regional in scope. Additionally, 3 other funds are currently operating in Costa Rica (CFA, E & CO and Ecoempresas) that have executed 9 operations for a total of US\$ 3.1 million.

**Table: IDM's Active Portfolio**

Project Name	Approval Date	Amount in US\$
Support for Public Sector Reform	30-June-97	12.65m
Water for Urban Center program and Rehabilitation of the Limon Province	9-October-91	50.95
Improvement to Health Services	25-Nov-92	42.00m
Cadastre and Public Registry	29-Nov-00	65.00m
Justice Administration 2 <sup>nd</sup> Phase	5-DEC-01	22.40m
Development of the Health Sector	30-Jan-03	6.35m
Power Sector Development III	1-Dec-93	320.00m
Education (Pre-school and 3 <sup>rd</sup> cycle)	21-May-97	28.00m
Power Interconnection for Central America (Regional Project – 2 operations)	28-Nov-01	40.00m (total)
Sustainable Agro. Productivity	27-Nov-02	14.40m
Total		601.76m

120. *Areas to improve and Technical Matters.* Progress has been made. In fact, procurement has been improved through coordinated efforts between executing entities, the Controller General's office and IADB-WB to make national legislation compatible with the Bank's norms and policies. Additionally, IADB is represented by a Permanent Advisory Group for Procurement (GAPA, its Spanish acronym) that maintains close ties with executing entities, the Controller General's Office and the Bank's procurement entity to facilitate a timely decision making process. Nevertheless, a "no-objection" approval must be given by Sectorial Specialists for absolutely all contracting that is financed by the IADB in Costa Rica. This causes a

burdensome paperwork process and significant delays. If the GAPA has to meet with the Procurement Committee at the Main Office, the approval process takes, on average, 3 months. In the ICE, for example, of the 50 tendering processes conducted in 2003, 12 were suspended and brought before the Procurement Committee. A case of particular interest involved a drilling operation tender that received differing opinions from the CGR and the Procurement Committee. As a result, IADB pulled financing and cancelled the procurement order.

121. **Profile of the World Bank's Portfolio.** The World Bank's active portfolio consists of 2 projects: Ecomarkets (US\$.32.6 million) and a project to Strengthen and Modernize the Health Sector (US\$.17 million). The portfolio also includes 2 donations to the Global Environment Facility-GEF, one for Biodiversity (US\$.7 million) and another for Ecomarkets (US\$.8 million).

**Table: World Bank Active Portfolio**

Name of the Project	Came into Effect	Close	BIRF	Donation
GEF Biodiversity	14-July-98	30- June-05		US\$7m
Ecomarkets Project	17-April-01	30-June-06	US\$32.6m	
GEF Ecomarkets	17-April-01	30-June-06		US\$8m
Health Sector Project	6-January-03	31-Dec.-06	US\$17m	

122. The World Bank's assistance in Costa Rica has been limited, and the implementation of the portfolio, although small, has been slow. Despite the fact that there are many well-run institutions that employ high-caliber professionals, a seemingly limitless number of internal, centralized approvals have hampered project performance.

123. The Country's Assistance Strategy (Country Assistance Strategy –CAS), published in April of 2004, consists of a selective program for loans and consultancy services that is focused more on knowledge transfer in areas of mutual interest than on program financing. The programs proposed (6 operations for US\$ 216 M0 for the period from 2004 to 2007). This loan program, although modest, represents an increase in the scope and size of operations in comparison with those executed over the past decade.

124. The projects proposed in the CAS include: Equity and Efficiency in Education (FY04-US\$ 30m); Project to Modernize Water and Sewage (FY05 – US\$70 m.); Project in the City of Puerto Limón (FY 05-US\$ 70m); Ecomarkets Project II (FY 06-US\$ 30m.); e-government for citizen services (LIL- FY06- US\$ 3m) and an Agricultural Project (FY07-US\$ 15 m.).

125. **Performance of the WB's portfolio.** The performance indices for procurement vary. Despite some deviations, there have been no major problems in the projects financed by the WB through GEF (environmental) donations and the Ecomarkets Project. The projects' executing bodies have contracted according to the rules of both institutions and standard tendering documents; the number of complaints received thus far has not been

significant. Auditors have not detected signs of corruption, fraud or inadequate management of funds or procedures. Nevertheless, implementation has been slow.

126. The Health Sector Strengthening and Modernization Project has recently been impacted by allegations of fraud and the subsequent firing of the Executive Director of the Costa Rican Social Security Office. While the procedures stipulated in the Loan Agreement have been followed, the number of internal reviews and lately the review and questioning of several contracts by Assembly Representatives tend to raise too many objections and conduct an excessive number of revisions in the process thus causing delays in project implementation -even further than in the past- and slow down of loan disbursements.

127. Despite efforts to include loan agreement approval for the health care sector in the Bill, Article 5 clearly stipulates that the "Guidelines and Procedures for Procurement set forth in Loan Agreement No. 7068-CR and its schedules will prevail over the procurement procedures, norms and contents specified in the national legal framework that govern goods and services procurement actions in this contract." All activities planned must be approved by the Institution's Board of Directors.

128. In order to generate a culture of austerity, consultant services are permitted only under exceptional circumstances, not on a permanent basis. Consultancy will be focused only on efforts to strengthen health programs that cannot be conducted by the institution's staff. All consultancy requirements are to be submitted to the Board for approval and should have the justification of the corresponding entity's management. Exceptions will be made only in cases where the amount involved is under US\$ 2,000.

129. Once the approval of the Institution's Board of Director has been secured, contracts for more than US\$.21,000 must be approved, as instructed by the Controller General of the Republic, by the Legal Division of the Institution. All contracts that exceed US\$.162,000 are sent to the Controller General's office for clearance after the respective Legal Division has given its ok. All of these interventions add, on average, an extra 3 months to the process. The supervision missions suggested that authority should be delegated to the Director of the Health Project Implementation Unit in order to move the procurement processes along. However, given current accusations of corruption, an immediate decision on this point is not expected. Of the loan for US\$.17m- in effect from January of 2003 to date- only US\$1.5 million has been disbursed.

130. The Efficiency and Equity in Education Project was negotiated from April of 2004 to March of 2005. It was signed on June 9, 2005 and was scheduled to be brought before the Assembly for consideration in August of 2005. It is hoped that the time that has been lost can be made up during project execution through implementation of specific measures identified on the basis of lessons learned.

131. The coordinating unit of the Ministry of Public Education (MEP) has a good record in executing projects financed by the Bank. It belongs to an MEP department, which ensures that the Government's directive to use installed institutional capacity is

followed. Under the Basic Education Improvement Project (PROMECE) financed with IADB loan proceeds -initially co-financed by the World Bank- the coordinating unit was given legal status so that it can better manage the resources assigned to the project. The MEP will request approval to assign legal status to the Efficiency and Equity Project within the law to be brought before the Legislative Assembly.

132. If legal status is granted, processes will be simplified and expedited as they will no longer have to go through the Institutionalized Procurement Unit of MEP. Steps will be taken to include -within the articles of the Law that approves the loan- specific provisions necessary to ensure that the Bank's Guidelines prevail over the National Procurement Law. This measure would be a practice to be applied in lending operations proposed by the Bank in order to prevent deviations that tend to arise at the project execution stage.

133. The LCA grants precedence to international agreements and their respective procurement norms. Nevertheless, different interpretations on the part of officials and the ad-hoc practices of some institutions have led to contradictions that have impacted on the execution of projects financed by the Banks. The one issue most affected involves the selection of consultants (firms or individuals) as the LCA provides public bidding must be used while the Banks' Guidelines stipulates short list procedures. This report recognizes that this weakness in the LCA must be dealt with and is expected that the discussions currently being held with the Government lead to an agreement towards harmonization of consultant practices.

**ANNEX I**  
**INDIVIDUALS INTERVIEWED DURING THE MISSIONS**

<b>NAME</b>	<b>POSITION</b>	<b>ENTITY</b>
Lic. David Fuentes	Vice Minister of Finance	Ministry of Finance
Mrs. Jeanette Solano García	Director General of Goods Administration and Administrative Procurement. (DGABCA) - Ministry of Finance	Ministry of Finance
Alicia Avendaño Rivera	Director General of Information Technology	Ministry of Finance
Lic. Carlos E. Mena Rodríguez	Budget Authority	Ministry of Finance
Ana Miriam Araya Porras	Budget Authority	Ministry of Finance
Gabriela Espinoza	Head of Systems Engineering (SIGAF)	Ministry of Finance
Lic. Guillermo Barquero Cruz	Head of Procurement	Municipality of San Jose
Lic. Marco Castro Camacho	Assistant Head of Procurement	Municipality of San Jose
Lic. Manuel Corrales Umaña	Head of the Unit for Authorizations and Approvals	The Office of the Controller General of the Republic (CGR)
Rosy Conejo Fernandez, Msc	Division of Institutional Development Unit for Authorizations and Approvals	CGR
Lic. Marcela Aragón Sandoval	Unit for Authorizations and Approvals	CGR
Lic. Manuel Martínez Sequeira	Head of the Consultancy Division and Legal Management	CGR
Lic. Marco Vinicio Alvarado	Associate Manager	CGR
Lic. Jesús Mora	Associate Manager	CGR
Lic. Daniel Sáenz Quesada	Head of the Division of Operations, Evaluation and Fiscalization	CRG
Eng. Jaime Molina U.	President of the Costa Rican Chamber of Construction	Private Sector
Federico Valerio Ford	Advisor, PROCOMER	Ministry of Foreign Trade
Susana Vazquez	Advisor, Head Office of Foreign Trade	Ministry of Foreign Trade
Dieter Fieberg S.	Permanent Director Chamber of Commerce of Costa Rica	Private Sector

Francisco Gamboa Soto	Economic Advisor Chamber of Commerce of Costa Rica	Private Sector
Luis Diego Osborne	General Manager GBM of Costa Rica, S.A.	Private Sector
Lic. Denise Aguero	Director of Contracting	Ministry of Public Work and Transport (MOPT)
Lic. Sergio Córdoba	Sub-Director of Contracting	MOPT
Arch. Gabriela Murillo Jenkins	General Division of Operations	Social Security Office of Costa Rica (CCSS)
M.B.A. Heibel Rodríguez Araya	General Manager	Costa Rican Institute of Aqueducts and Sewage Systems (AyA)
Lic. Roosevelt Alvarado R.	Director of Supplies	AyA
Dr. Waldemar Núñez Lopez	Director Procurement Office	Costa Rican Institute of Electricity (ICE)
<b>NAME</b>	<b>POSITION</b>	<b>ENTITY</b>
Msc. Luis Conejo M.	Director of the Head Office for Information and Technology	ICE
Alejandro Lara Vargas	Coordinator of Administrative Contracting	Costa Rican Radiographic Association S.A. (RACSA)
Alberto Bermúdez O.	Assistant General Manager	RACSA
Leonardo Campos	Head Office for Small and Medium Business	Ministry of Economy, Industry and Commerce
Miguel Tapia Z	Financial Director	Chamber of Construction of Costa Rica
Luis Amador J	Director of Technical Studies	Chamber of Construction of Costa Rica
Olman Vargas Zeledón	Executive Director	Federated Association of Engineers and Architects of Costa Rica
Eugenia Morales	Director of Information	Federated Association of Engineers and Architects of Costa Rica
Mauricio Arce Lara	President	Chamber of Consultants for Architecture and Engineering
Ricardo Echanty Lara	Partner	BEL Engineering
Max Sitenfel	Partner	BEL Engineering
Mario Fernández Ortiz	Former Minister	Ministry of Public Works and Transport

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Gilberth Garro Jara	Advisor	Social Security Office of Costa Rica
James F Phillips	Director of Planning	The Costa Rican Institute of Aqueducts and Sewage Systems

## ANNEX II PRIVATE SECTOR PERFORMANCE

### I. The Construction Industry

1. The construction industry is the most significant player in the procurement context. Similar to other situations found in other parts of the world, construction is composed of various market areas that overlap, including housing and building construction, civil works, repairs and maintenance, and equipment suppliers and materials.

2. There are various business associations well organized, including the Costa Rican Chamber of Construction and the Chamber of Consultants, Engineers and Architects. The Federated Association of Engineers and Architects is in charge of ensuring that its members meet professional standards.

3. The public sector is the principal agent of demand for civil engineering construction works that are executed under contracts with the private sector while the private sector dominates the development and construction of housing, commercial building and tourism projects.

4. The statistics of the Federated Association of Engineers and Architects shed some light on the annual billing amount and the number of businesses involved in generating the same. Figures for the year 2004 show that 19,634 new works were undertaken by the private sector for an approximate total value of US\$856 million, which represents around 60% of the value for total production, which was US\$1,400 million, or 8% of GDP.

5. The construction sector is fragmented and only a few companies are responsible for large contracts (the remainder of contracts fall to small companies or individuals). This fragmentation makes for stiff competition amongst bidders in a free-market atmosphere. Nevertheless, new contractors find it difficult to enter into the market due to the number of requirements that must be fulfilled and the length of the decision making process. This is particularly onerous for foreigners and small and medium businesses that are not familiar with the system. A construction permit can involve more than 100 steps, including a business's registration in the Federated Association and the payment of a "construction fee" applicable for all work plans that are presented for approval before state or municipal offices.

6. The lack of adequate production indicators for different industry segments impedes the strategic planning efforts of both the sector and its businesses. This is due to the fact that it is difficult to precisely determine the significance of specific patterns in different market areas and the impact of the same on construction companies. For example, one of the most notable patterns over the last few years has been a decrease in the public sector's demand and the compensating effect produced in part by an increase in employment growth in the private sector. Nevertheless, many businesses reacted too slowly to this market change, hampered by a lack of timely market information and a

proper analysis of indicators. Construction demand seems to be determined principally by:

- The clients' tendency to pass on responsibilities to the contractor in the early stages of the project
- The growth of demand in the private sector, which is probably more variable than the demand in the public sector
- The growth of demand for repairs and maintenance, principally in the public sector

Other characteristics of the environment in which construction firms operate include:

- Certain monopolies for material supplies such as iron, cement and fuel.
- High social costs. 51 % of the value of a payroll corresponds to social obligations.
- Monopoly in the insurances issued by the state-owned INS. This creates a situation where the majority of the guarantees necessary in a contracting process must be issued by the banks.
- Heterogeneity of contracting conditions.

## **II. The Small and Medium Business (PYME)**

7. Small and medium companies are an important business sector in Costa Rica. Although the information on the number of PYMEs dedicated to construction activities is scarce, its magnitude can be inferred from the number of projects and monetary amounts registered with the Federated Association for Construction and Consultancy Work.

8. In the year 2004, the Federated Association registered close to 50,600 projects in these areas with an estimated value of US\$945 million and which involved 14,000 professionals and 1,100 affiliated companies. The industry's fragmentation, coupled with the fact that the data provided by the Federated Association excludes the public sector, makes it difficult to determine exact figures. However, it is possible to infer that the majority of the Association's contracts were executed by PYMEs.

9. If one adds to this the fact that a significant portion of work generated by large contracts is sub-contracted to small businesses, many of which are informal PYMES, we can make a gross estimate that 30,000 PYMES are currently involved in construction and consultancy work.

10. The government is interested in backing and developing this market sector and taking advantage of the benefits that it can offer to the national economy. In the year 2002, the Legislative Assembly approved Law 8262 to strengthen PYMES by establishing a legal framework for institutional support.

11. In a similar way, the DR.-CAFTA recognizes the creation of programs to promote the PYME's participation in the tendering process for state goods and services and excludes these programs from the coverage established by the agreement. The Ministry of Economy, Industry and Commerce, which acts as the supervisory agency through its

General Office for Support to the Small and Medium Businesses, is involved in various projects to strengthen the PYMEs through:

- The Special Fund for the Development of Micro, Small and Medium businesses, operated by the Banco Popular, is directed towards PYMEs that do not have access to credit and is comprised of a fund for guarantees and another for financing.
- A non-reimbursable fund, administered by the Ministry of Science and Technology, finances activities directed towards promoting and improving management capacities and competitiveness amongst the PYME. The two funds mentioned are in the initial stage of operation.
- The implementation of an Internet page with information on government policies and regulations, technical assistance and information on other organizations also able to provide assistance. Additionally, the OAS is financing a project to support the internationalization of PYMEs through the strengthening of services based on information and communication technologies for export management, the partnership promotion, business creation, etc.
- Pilot plans for training and consultancy that apply tools for business organization, human resource management, accounting and finance, sales and marketing strategies.

12. In the year 2001, the International Finance Corporation (IFC) published a study with the results of a survey applied throughout the world on: "Business Sizes and the Business Environment." This report contained information from businessmen related to the obstacles that they had encountered in developing their businesses. In the case of Costa Rica, the principal obstacles identified by PYMES were relative to financial aspects (including inflation, the rate of exchange, and financing), taxes and onerous regulations, deficiencies in infrastructure, and criminality. The majority of these barriers were confirmed during the preparation of this CPAR:

- The perception that the government procurement and contracting process is long, complicated and costly
- The excessive demand for licenses, permits, registries and inspections
- Taxes, regulations, and heavy and cumbersome social obligations
- Little PYME's limited familiarity with public sector procurement and contracting systems and a loss of interest if they fail to win the first tendering processes in which they participate
- The institutional weakness of the agencies that assist PYMEs.
- Limitations in access to credit, guarantees, and insurance.

13. The most salient recommendations regarding this sub-sector advocate process simplification, the need for pragmatism in the focus of institutions that deal with PYMEs and the importance of helping businesses to compete effectively in an open and just market.

### **III. The Consultancy Industry**

14. The Chamber of Consultants for Engineering and Architecture has around 50 members that bill approximately US\$.60 million per year. Regardless, there are many small companies or individual contractors that are involved in architecture that are not affiliated with the Chamber. In general, these businesses provide small-scale services to individuals or companies.

15. The preparation of this CPAR prompted the Chamber to make an inventory of its membership by using World Bank formats. The environment in which consultancy is conducted is similar to that described for construction businesses and PYMEs. This means that an open market is operating but subtle barriers exist for new businesses, whether national or foreign, which generates complexity in regulations and tendering and procurement policies in government agencies that in turn translate into higher costs for participants.

16. The business environment for professionals is characterized by high levels of competitiveness both within the same professional circle and amongst other professional areas. Consultants operate very independently in the design phase of projects but less so during the construction phase where their role is generally limited to supervision or consultancy on behalf of a client.

17. There are problems with the attainment of professional liability guarantees, particularly when the amounts involved are high (the INS only provides insurance coverage up to one million dollars and any amount beyond must be insured abroad). In practice, since the LCA treats contracting of consultancies as it does any other form of bidding (works or goods), the professional liability is equivalent to performance guarantee or bond with values determined up to 10 percent of contract price, as provided in the LCA

18. Another relevant feature of the local consultancy context is that environmental regulations require very specific studies that call for highly qualified staff who are few in number. Finally, there is a new requirement not yet implemented which requires that all consultant firms must attain ISO certification.

19. Costa Rica is one of the few countries that has not de-regulated the practice of technical professions and as a result, has avoided many of the problems that confront consulting firms in other countries, including: the proliferation of unqualified firms offering services, the seemingly endless list of companies participating in tendering, the clients' tendency to measure professional activities with the same stick used to evaluate industrial products and select consultants based only on prices, which causes a decline in the quality of professional services and projects.

20. In Costa Rica, professional services are contracted through open tendering. In general, 8-10 proposals are received (not 30 or more as is seen in other countries) and selection is basically made according to the technical quality of the proposals although price is somewhat relevant to the process. In summary, competition appears fair and the results acceptable.

21. The consultancy companies have been forced to find new tactics to face competition and respond to an environment that requires diversification in strategies and the development of more commercial focuses. For example, the increase in certain contracting modalities such as design and construction at a fixed price, in addition to the so-called BOT, impose changes in the way that engineers and architects organize their professional practices.

22. The firms that have traditionally worked for the public sector generally specialize in project design and works supervision and as such lack the flexibility needed to react to market changes (more demand in the private sector and less in the public sector) and to economic cycles (globalization, DR-CAFTA, public debt).

23. Some concern exists regarding the direction that the engineering and architecture professions will take in the future given that many businesses lack an ample vision of the market and their own objectives. In general, consultancy firms tend to be strongly oriented to operational aspects of management rather than strategic management. This is possibly due to the technical orientation of the businesses' owners.

## ANNEX III THE DR-CAFTA AND THE PROCUREMENT SYSTEM IN COSTA RICA

### Referential Framework

1. The international agreements on government procurement are another incentive in the drive to consolidate and reform contracting practices and procedures in Costa Rica.
2. Costa Rica, although not a part of the Agreement on Government Procurement of the World Trade Organization (WTO), has effectively incorporated this issue in the free trade agreements to which it has subscribed since 1994.<sup>14</sup> Currently, Costa Rica is a member of four free trade agreements: CR-Mexico (1994), CR-Dominican Republic (2002), CR-Chile (2002) and CR-Canada (2004)<sup>15</sup>. The country is also in the process of approving two other agreements at the legislative level: CR-CARICOM and the Free Trade Agreement between Central America, the United States and the Dominican Republic (DR-CAFTA).<sup>16</sup> Costa Rica has also actively participated in the Group Negotiation on Public Sector Procurement in the framework of the Free Trade Area of the Americas (ALCA). Nevertheless, of these agreements the DR-CAFTA will have the greatest impact.<sup>17</sup>
3. The DR-CAFTA, once in effect, will signify an important commitment on the part of the government to assume responsibility for encouraging measures to modernize the state in key sectors. These efforts will extend to the national, provincial and municipal levels and will include autonomous entities and state businesses. It is important to add that the adequate implementation of the DR-CAFTA will represent an opportunity for the government to modernize, deepen and consolidate reforms in the public contracting sector.
4. Chapter 9 of the DR-CAFTA, which deals with government procurement, is based on NAFTA. Its objective is to establish the guarantees that the Parties must give to the suppliers, goods and services of the other Parties to engage in public procurement.<sup>18</sup> The chapter will allow for: (i) a consolidation of the different principles and procedures of public contracting established at the national level and, (ii) a modernization of all national practices that in one way or another have impeded the participation of foreign suppliers in government contracting.

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<sup>14</sup> Nevertheless, Costa Rica actively participates in the Working Group on Transparency in Public Procurement of the OMC and has actively recognized the need to reach an agreement on this subject.

<sup>15</sup> The Free Trade Agreement subscribed between Costa Rica and Canada in the year 2002 does not deal with public procurement.

<sup>16</sup> For more information on the DR-CAFTA's outcomes in other areas, we recommend reviewing the Explanatory Document of the Free Trade Agreement of Central America, the United States, and the Dominican Republic published by the Ministry of Foreign Trade of Costa Rica in the year 2004 and available at [www.comex.go.cr](http://www.comex.go.cr).

<sup>17</sup> Over the last few years, almost 50% of Costa Rica's imports and exports have involved the US market. Additionally, almost 60% of the direct foreign investment over the last decade has come from the US.

<sup>18</sup> The DR-CAFTA defines Party as any state that in which the FTA is applicable.

5. The DR-CAFTA stipulates specific obligations for the entities registered on Costa Rica's positive list and accepts the application of only those procedures and laws that are in keeping with its requirements. The treaty decrees that the parties must apply the principle of national handling of goods, services and suppliers from other countries and determines the way in which the origin of the goods will be established; it prohibits the application of special compensatory conditions and stipulates that no measures involving customs duties or other import tariffs or charges will apply that differ from those measures established specifically for public contracting.

6. Another characteristic of DR-CAFTA is its multilateral nature. The treaty's public procurement provisions treat merchandise, services and suppliers from other Central American countries or the Dominican Republic in the same way as those coming from the United States. Regardless, the agreement stipulates different coverage for different countries. In the case of the US, the chapter applies only to public entity procurement covered by the treaty that exceeds the established thresholds while the coverage for Central American countries is much more extensive due to the fact that it does not exclude government entities and applies no thresholds.

7. The DR-CAFTA incorporates specific commitments regarding market access (foreign suppliers of goods and services should be treated in the same way as national suppliers). The DR-CAFTA's scope is limited to the entities listed in its tables and includes central, local and decentralized entities wherever national budget funding applies (which primarily affect the health and construction sectors). Unless otherwise specified, the DR-CAFTA covers all the subordinate agencies on these lists.

8. Nevertheless, the DR-CAFTA incorporates provisions that establish different coverages for different countries. As such, the treaty sets thresholds to delimit coverage between Central American countries, the Dominican Republic and the US while no thresholds are set for contracting with Central American countries or those conducted between said countries and the Dominican Republic (given that coverage is more extensive). With regard to the coverage between the United States and each Central American country, the thresholds applicable to Central American countries will be double that of the thresholds applicable to US entities during the three year period directly following the date on which the treaty comes into effect. After this period, the thresholds will be equalized.

9. The DR-CAFTA's coverage extends to national, provincial and municipal levels and includes autonomous entities and state-run businesses. The applicable thresholds are:

- US\$58,550 for goods and services and US\$ US \$6,725,000 for construction services at the central government level.
- US\$477,000 for goods and services and US \$6,725,000 for construction services at the sub-central government level.
- US\$250,000 for goods and services and US \$6,725,000 for construction services for decentralized entities.

## II. Implications of the DR-CAFTA in Public Contracting

10. The implications of the DR-CAFTA for the public contracting regime in Costa Rica are identified as:

- First, access for suppliers and contractors from member countries of the DR-CAFTA that decide to participate in procurement in the public sector in Costa Rica.
- Second, modifications to the legal and regulatory framework.
- Third, modifications in the administration's procurement procedures and practices.

### 1. Supplier and Contractor Access<sup>19</sup>

11. With regard to the implications listed above, it is important to analyze the list of entities covered according to the expenditure allocations for goods and services procurement in public entities. It is clear that no thresholds practically exist for contracting among Central American countries or between said countries and Dominican Republic while the situation with the United States is different given that the establishment of thresholds -combined with a positive list approach aimed to determine which entities the treaty is applicable to- demonstrates that the percentage of real contracting covered by the same is in fact limited.

12. An analysis of the list of entities covered by Annex 9.1 shows that, in the case of the United States, the Costa Rican Petroleum Refinery is not included in the treaty's coverage despite the fact it is the largest buyer of non-personal goods and services in Costa Rica. This situation can be primarily explained by the following:

- Costa Rica did not include the entities covered in stratas A and B in its negotiation process with the expectation that the United States would indicate a specific interest.<sup>20</sup>
- In the specific case of RECOPE, the United States showed no interest in including this institution in the coverage.
- Additionally, Article 9.9.2.d of the agreement stipulates that any given procurement entity may award contracts by all means other than open tendering procedures when involving items procured in markets for basic products such as oil, which constitutes

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<sup>19</sup> For further reference, see Annex 2 of this report, which contains a comparative matrix of DR-CAFTA's coverage.

<sup>20</sup> For further information regarding public agency classification by strata in Costa Rica, see Section B of this report.

90% of the goods and service procurement conducted by RECOPE. As such, if RECOPE were to be included amongst the entities covered by the treaty, it would be conceivable to use any procurement procedure to purchase oil. This may be the reason why the United States has never shown interest in including RECOPE on the list.

13. It is important to point out that the information available when the treaty was negotiated was based only on the amounts budgeted for public sector procurement of non-personal goods and services. As such, the negotiators from both teams lacked the information needed to adequately develop and specify the chapter's coverage. Without a doubt, this situation affected the negotiation process.

14. This is clearly reflected in the analysis of the percentage of the budget's goods and services procurement that was finally included within the coverage with the United States. In this sense, of the Institutions that are included in strata A and B, only ICE and CCSS are on Costa Rica's positive list. The other institutions in these strata, which account for more than 54% of the budget, are not covered in the agreement with the United States but are contemplated in the pact signed with other countries.

## 2. Legal Framework<sup>21</sup>

15. A comparative analysis indicates that total compatibility exists between the regulations established in the Costa Rican legal framework and DR-CAFTA's normative dispositions. The DR-CAFTA makes no changes in the norms on public contracting in the country but instead acts as a reinforcement to the existing legal regime on administrative contracting as described in the specific contents of the agreement (as described below).<sup>22</sup>

a. Ambit of application: the provisions of Chapter 9 of the DR-CAFTA apply to public procurement of the entities of the Parties incorporated in Annex 9.1 regardless of the contracting method- including contracts for public works concession- when the estimated amount of the contract exceeds the threshold that has been established.

16. The treaty also stipulates a series of activities to which it does not apply, such as donations and loans made to the state, procurement of services or agencies for fiscal deposits, contracting of public employees and activities involving government employment and supply of merchandise and services to state, regional or local governments. Some of these measures are excluded from the procurement procedures regulated by LCA.

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<sup>21</sup> The legal basis for public procurement is based on article 182 of the Political Constitution, the Law for Administrative Procurement No. 7494 (LGCA) and its Regulations (RGCA), The General Law on the Concession of Public Works No. 7762, the General Law for Public Administration No. 6227 and the Organic Law of the Controller General of the Republic No. 7428.

<sup>22</sup> To further analyze the concordance between the legal framework of Costa Rica and DR-CAFTA's dispositions see Annex A, which contains a comparative matrix of the treaty's articles and a corresponding correlation with the Costa Rican legal framework.

17. In the case of Costa Rica, the agreement carries an exception clause stipulating that it will not apply to Public Administration Procurement programs directed towards micro, small, and medium businesses (PYMES). The fact that the government of Costa Rica can develop procurement policies, mechanisms, and purchasing instruments for the public sector that support the PYMES' development is set forth in the Law for Strengthening the Competitiveness of the Small and Medium Business No. 8262.

b. Principle of national treatment (no discrimination): the DR-CAFTA incorporates a series of fundamental administrative contracting principles out of which the most outstanding is the principle of national treatment (no discrimination); it is applied in favor of suppliers, merchandise, and services provided by the other Parties to the agreement.

18. The LGCA recognizes the principle of equality and open competition that is implicit in national treatment given that it causes the Administration to give equal treatment and participatory opportunities to all potential suppliers in administrative procurement procedures.<sup>23</sup>

c. Principle of publicity: the treaty stipulates different publication obligations according to the laws, regulations, procedures, judicial rulings and administrative decisions applied to public contracting; this also applies to the notifications placed to announce tendering opportunities for all areas covered by the agreement.

19. There is a direct relation between the Costa Rican legal framework and the provisions of the DR-CAFTA concerning this principle. It is established in a general manner in clauses of the Political Constitution referring to the publication of laws and in the General Law for Public Administration, which contains references to the obligation to publish actions that affect the public interest.

20. The LCA establishes the principle of publicity by requiring mandatory advertisement of bidding opportunities and procurement procedures in either printed, electronic or other means commonly consulted by pertinent individuals or entities. In the specific case of public competitive tendering, the obligation exists for agencies to advertise in the Official Gazette the invitations to bid and key tendering management steps, as set forth in the procedures established in the bidding documents. The RCA also contemplates similar stipulations.

d. Prohibition of contract fractioning: The chapter on Public Procurement is based on the principle of non-fragmentation of procurement contracts in order to avoid public agencies' non-compliance with the Chapter's obligations as set forth in the General Law of Administrative Contracting and its Regulations.

21. This principle is extremely important given that studies conducted by the Controller General of Costa Rica indicate that a marked tendency exists in certain

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<sup>23</sup> The DR-CAFTA stipulates that each Party shall concede to the merchandise and services of the other Party and to the suppliers of such merchandise and services, no less favorable treatment than that given to its own merchandise, services and suppliers. Specifically, this treaty states that no Party may concede a local supplier less favorable treatment than that given to another local supplier based on a degree of association or links with foreign property; or discriminate against any local supplier due to the fact that the merchandise or services offered by said supplier in response to a specific procurement action involves the merchandise or services of another Party.

institutions to use mainly direct contracting for procurement purposes when this modality should in fact be reserved for exceptional cases. This situation may violate the principle of non-fragmentation, to be analyzed in detail in subsequent sections.

e. Deadlines for submission of bids: the provisions of the DR-CAFTA require that realistic time limits be set for bid preparation and submission. Specifically, it stipulates that the durations allowed for these tasks must be no less than 40 days from the date that calls for tenders were published to the deadline set for tender presentation.

22. Costa Rican legislation established minimum periods that are contemplated in the RGCA and which stipulate:

- 20 working days for public competitive bidding procedures.
- 20 working days in the case of construction or concession of works or imported supplies.
- 10 working days for other cases.
- 8 working days in the case of bidding procedures by registry.
- Three working days for restricted tendering procedures.

23. Costa Rican legislation sets minimum periods that may differ from those established by the DR-CAFTA but no discrepancy exists in the application of provisions. As such, when determining periods, the government must take into account that as far as the provisions of DR-CAFTA, at least 40 days must be allotted for any procurement modality.

24. The Annex to Chapter 9 also includes a note, which is applicable to Costa Rica, indicating that the country must allot at least 30 calendar days to public tendering procedures and at least 10 calendar days for tendering by register during the first two years of the commercial treaty. Once said period has expired, the general obligatory period of 40 days should be applied.<sup>24</sup>

f. Procurement documents: the agreement stipulates the minimum content of bidding documents and the way in which said documents should be made available, including electronic publications that are accessible to all interested suppliers. Specifically, the information given must make reference to all areas that must be covered by tenderers when preparing and submitting tenders, including all aspects relative to the criteria that the contracting institution will utilize to award the contract.

25. Costa Rican legislation stipulates that tendering documents (cartel) must include general conditions and technical specifications as well as the bases to qualify and compare tenders. The RGCA includes also provisions on the minimum content of these documents as well as information on related modifications and clarifications. Nevertheless, the legislation does not contain specific dispositions that make institutions to publish electronically documentation in order to facilitate access to potential

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<sup>24</sup> Annex 9.b.i, Section C of the DR-CAFTA stipulates that the 40-day period will not apply to contracting entered into by the Costa Rican Institute of Electricity (ICE).

suppliers.<sup>25</sup> Consequently, Costa Rica should take measures to meet this requirement. In fact, Annex 9.1 of the treaty has given the country two years to comply with this disposition.<sup>26</sup>

g. Technical specifications: the DR-CAFTA prohibits the Parties to draw up, adopt or use technical specifications that create unnecessary obstacles to trade, specifying that said specifications must be based on international norms or known national standards for performance and not merely on descriptive elements. The RGCA also contains this principle.

h. Participation requirements: the treaty deals with this issue by regulating the way in which registry requirements, evaluation or other requirements or conditions for participation in procurement are established. The treaty provides that conditions should be limited to the points essential to guarantee that the supplier possesses the legal, technical and financial capacity to fulfill the requirements and technical specifications of the contract. The procuring agency should publish notifications with enough advance notice to allow interested potential suppliers to register, be evaluated or meet any requirement for participation.

26. Costa Rican legislation sets forth, in both the LGCA and its Regulations, provisions that allow pre-qualification of bidders in competitive bidding as well as tendering by registry or restricted tendering that are in keeping with the treaty's dispositions as discussed above.

i. Contracting procedures: the DR-CAFTA stipulates that the procuring entities must award contracts through open competitive procedures, meaning any procurement method of a Party as far as said procedure guarantees the general principles that are established in Chapter 9. Additionally, it stipulates specific cases in which the procuring agency can, under exceptional circumstances, award contracts by means other than open tendering procedures if and only if said procedures are not utilized to avoid competition or protect national suppliers.

27. In the case of Costa Rica, the legal framework stipulates in Article 182 of the Political Constitution and in the General Law of Administrative Procurement, the principle that open or competitive procedures (open tendering, tendering by registry, restricted tendering and auction) should be applied as a general rule while direct contracting should be reserved for exceptional cases.<sup>27</sup>

28. The LGCA and the RGCA stipulate the exceptional cases under which direct contracting can be used. Nevertheless, when examining the grounds for exception established in this norm, it can be seen that they do not exactly match those cases stipulated in the DR-CAFTA. Because of specific provisions provided in the DR-

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<sup>25</sup> Article 40 of the LCA stipulates that the Administration may utilize any electronic means to communicate acts related to contracting procedures if there are guarantees that the information will be received and the message will be intact. Nevertheless, this disposition is not obligatory as it is under the DR-CAFTA.

<sup>26</sup> The scope of the COMPRARED program that is explained in detail in this study constitutes, without a doubt, an important step in this direction.

<sup>27</sup> The practical application of this principle is analyzed in detail in the next section. Studies conducted by the Controller General of the Republic show that direct contracting is utilized by many state institutions in the majority of their procurement processes.

CAFTA, public entities can not utilize in procurement processes covered by the agreement, some exceptional cases provided in the national procurement law.

j. Awarding of contracts: The Chapter on Public Procurement spells out the requirements that suppliers' tenders must meet to be considered for contract awards. Specifically, it indicates that in order for a tender to be considered, it must be submitted in writing and meet the requirements established in the bidding documents. It provides also that entities shall award the contract to the bidder determined as capable of executing the contract and whose bid results the most advantageous, according to the evaluation criteria established in the bidding documents.

29. The DR-CAFTA stipulates that the procuring entities must notice participating suppliers of contract award decisions, provide information regarding the basis of such decision and the relative advantages of the winning tender. Immediately after the contract is awarded, advertisement must be posted indicating why a specific procurement method other than competitive bidding was utilized, in cases in where open competition was not applied.

30. In the case of Costa Rica, the regulations also stipulate that tenders must fulfill the basic requirements established in the bidding documents, be submitted in writing by a bidder that meets requirements for participation in the aforementioned documents. If none of the tenders meets the requirements established in the bidding documents or determined that such requirements are not agreeable to the general public interest, then the tendering process shall be cancelled and such a decision duly justified.

31. Additionally, the procuring entities must notice suppliers of decisions related to contract awards and permit access to pertinent information regarding the same, in accordance with RGCA stipulations. In public tendering procedures, an obligation exists to publish award notices that indicate the name of the entity and provide a description of the contract and the award amount. Nevertheless, this obligation does not apply to procurement procedures other than public tendering. For this reason, Annex 9.1 of the agreement gives the country two years to make the corresponding adjustments to its internal regulations.

k. Confidentiality of information: the treaty stipulates that the Parties, their procuring entities and their supervisory authorities are forbidden from divulging confidential information without the formal authorization of the provider of said information if said revelation is damaging to legitimate commercial interests or may adversely affect fair competition amongst competitors.

32. In Costa Rica, the General Law of Public Administration (LGAP) and the RGCA indicate that neither the Parties nor the general public can have access to bidders' confidential bidder documents submitted solely for the purpose of meeting specific requirements towards qualification, as stipulated by the procuring entity in the tendering process.

l. Guarantee and integrity of procurement practices: the treaty stipulates that each Party will adopt or maintain procedures to declare the ineligibility of bidders that have participated in illegal or fraudulent activities related with the procurement process.

33. The legal framework in Costa Rica contains sanctions that are penal or civil in nature for bidders who have engaged in illegal practices in the bidding process. These dispositions are listed in Annex A.

m. Objections from suppliers: the commercial treaty recognizes the need to establish at least one administrative or judicial authority that is impartial and independent from contracting entities. This authority will receive and review objections raised by suppliers regarding the obligations of the Party and its entities under this Chapter and issue pertinent resolutions and recommendations. In cases where an entity other than the designated authority reviews objections filed by a supplier, the Party must guarantee that the supplier has the option to appeal any decision reached before said impartial and independent administrative or judicial body.

34. In this sense, the Costa Rican norms stipulate that legal control over the actions of Public Administration relative to large contracts corresponds to the Controller General of the Republic. Additionally, the norms indicate that both the decisions of this body as well as those reached by the agency conducting the procurement process will be subject to jurisdictional control and can be challenged through the litigious-administrative venue. Both the LGCA and the RGCA contain detailed dispositions on this issue.

### **3. Practices and Procedures in Public Procurement**<sup>28</sup>

35. Although it is evident that the Costa Rican legal framework is fully compatible with the dispositions of the DR-CAFTA, it is important to focus on some of the elements of contractual practice that require improvement in order to guarantee full participation of and fairness to foreign suppliers and increased efficiency in the procurement processes conducted by state institutions.

a. Availability of information to take strategic decisions: as has already been mentioned in other areas of the study, Costa Rica lacks an integrated system for public procurement to provide strategic information for decision making. COMPRARED is a good tool for transparency that seeks to automate the state's administrative contracting. Unfortunately its scope is limited to central administration, thus excluding the principal agencies that procure the largest amounts of goods and services in the public sector.

36. The difficulties associated with obtaining up-dated and detailed information on procurement becomes a significant obstacle to guaranteeing the full application of the principles of transparency and publicity; two of the most important pillars of the principle of efficiency promoted by the DR-CAFTA. The greater the publicity and transparency in management of procurement, the larger the participatory base and the likelihood of attaining better price conditions and quality.

b. Lack of an integral vision: studies conducted by the Controller General's office indicate that no integral vision of the procurement process in public institutions currently exists. Any efforts in this direction require entities to prepare annual operating plans that

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<sup>28</sup> For further information about the practices of public institutions in Costa Rica, see section XX of this report.

can be used as the basis for national procurement plans that reflect properly their requirements for goods and services necessary to fulfill defined actions and goals intended in annual operating plans.<sup>29</sup>

37. In order to guarantee greater efficiency in procedures, procurement processes must be uniform. For example, there are several supplier registries and product catalogues. Administrative practices vary from institution to institution, which significantly complicates the participation of foreign suppliers in tendering procedures. These practices must be improved to promote competition and save the participants both time and money, which is clearly the reasoning behind the trade agreement.

c. Excessive utilization of direct contracting procedures: despite the fact that national legislation stipulates that direct contracting is to be used only under exceptional circumstances, it is actually a common procurement practice in many institutions according to studies conducted by the CGR. It is important to consider that the excessive utilization of this type of tendering exposes the procuring agencies to the risk of incurring in contract fragmentation as a means of avoiding the application of more complex tendering procedures with more requirements and formalities.

38. This practice is not only expressly prohibited by Costa Rican legislation, but is also a clear violation of the dispositions set forth in the DR-CAFTA. Additionally, fragmentation directly affects the institution given that buying in small amounts impedes efforts to achieve better prices and take advantage of the economies of scale generated by volume procurement. In fact, abuses in the use of direct contracting procedures leads to significant administrative expense given that each purchase is conducted under an independent procedure.

39. Based on the aforementioned, it is possible to assert that if Costa Rican legislation is to meet the DR-CAFTA's requirements, it will be necessary to improve certain administrative practices to guarantee the full application of the principles of national treatment, publicity and transparency. The work in these areas undoubtedly constitutes a significant challenge for public administration in Costa Rica, which has developed some promising systems for publicity and transparency but has yet to incorporate all institutions in the effort. Currently, it is impossible to fully capture all the dimensions of public procurement in the country.

40. If the treaty's provisions are also applicable to other Central American countries and the Dominican Republic, it is logical to assume that the practices and systems established to guarantee the DRCAFTA's principles will also drive efforts for increased transparency and publicity in these countries. This will in turn benefit Costa Rican suppliers that participate in contracting procedures.

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<sup>29</sup> In January of every year, each administrative institution can publish its annual procurement plans in the Official Paper La Gaceta. This information (with the exception of institutions covered by COMPARED and others that under their own initiative publish on their web pages) is not easy for interested parties to access. This is a serious impediment to supplier use of information. Additionally, suppliers must be listed on a registry if they wish to offer their products to institutions that possess catalogues with products that are different from those offered by other state entities.

41. Additionally, upon analyzing the list of government activities included at the sub-central level for Costa Rica, it is possible to observe that almost all of the country's municipalities were considered. Despite this, the DR-CAFTA will never be applicable to the majority of operations conducted at this level given that the threshold is set at US\$477,000, which is, in the majority of cases, significantly more than the total budget allotted to municipalities for procurement of goods.<sup>30</sup>

42. The aforementioned leads to the conclusion that, with regard to Costa Rica's relation with the United States, the treaty covers around 40% of the budget for procurement of goods and services and the main impact is produced not by the Chapter's coverage but instead as the result of efforts to consolidate and strengthen procurement procedures and practices.

43. Finally, with regard to coverage, the DR-CAFTA recognizes the public administration's efforts to establish a program for procurement of goods and services to ensure at least the minimal participation of PYMES. Any programs that the Costa Rican government establishes under these lines will also be excluded from the coverage set forth by the treaty. It is important to point out that this exception is also applicable to the other Parties to the agreement.<sup>31</sup>

### III. Summary and Recommendations

44. This section has identified the areas that must be worked on if Costa Rica is to ensure that it is in the position to reap the benefits of the DR-CAFTA:

- Develop actions that unify administrative contracting practices in the different institutions for the purpose of increasing efficiency and complying with the conditions established in the DR-CAFTA. Immediate efforts are needed to develop a single catalogue for all the institutions that classifies the merchandise procured in contracting procedures and the corresponding expense. Along the same lines, a single supplier registry should be established to facilitate the participation of more tenderers in the procurement process.
- In order to guarantee transparency in public contracting, all suppliers must have access to timely information that helps them to decide which tendering processes they wish to participate in. Real access to information on the universe of public procurement that includes not only data on future procurement but also on past procurement becomes a fundamental instrument for strategic decision making. It also

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<sup>30</sup> Only the Municipalities of San José, Alajuela, Belén, Cartago, Escazú, Goicoechea and Heredia have procurement budgets that allow them to contract for amounts higher than the established thresholds.

<sup>31</sup> The Law on PYMES No. 8282 stipulates the need to create a national program for procurement of goods and services that ensures the minimum participation of national PYMES that produce goods that are comparable in quality, supply and are equal or inferior in price to imported products. Public sector procurement will not discriminate against or show bias towards national businesses over foreign counterparts or larger PYMES. The State will develop procedures that facilitate the PYMES compliance with requirements and procedures relative to procurement.

contributes to guaranteeing that the principles of publicity and transparency in public procurement will be applied. This information will also help the individuals in charge of the country's trade policy to conduct on-target negotiations that are based on precise knowledge of the universe of public procurement in Costa Rica. This will provide negotiators with a strategic advantage that will definitely benefit the country as a whole.

- The government should make an effort to bring together all of the institutions under an integrated procurement system that helps it not only to guarantee the transparency of procurement but also promotes efficiency. COMPRARED is clearly a step in the right direction, but it needs to extend its coverage beyond the central government's institutions to include municipalities and decentralized entities. The first institutions that must be included in this system are the 6 entities in Strata A given that together these bodies account for a significant percentage of the total national budget for procurement of goods and services.
- Given that the procurement units at public institutions are in charge of applying the stipulations of the DR-CAFTA, it is necessary to initiate a nationwide, intense process to train all the staff in the units covered by the treaty. The purpose here is to inform these individuals about the treaty and ensure that they are in the position to effectively apply the principles and dispositions established therein.

**ANNEX A**

**COMPARATIVE TABLE**  
**GENERAL LAW FOR ADMINISTRATIVE CONTRACTING – CHAPTER ON PUBLIC SECTOR PROCUREMENT UNDER DR-CAFTA**  
**AND OTHER LEGAL REFERENCES**

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
<p><b>AMBIT OF APPLICATION</b></p>	<p><b>ARTICLE 1.- Coverage.</b></p> <p>This Law regulates the contracting activities of the bodies of the Executive Branch, the Judicial Branch, the Legislative Branch, the Supreme Tribunal of Elections, the Controller General of the Republic, the Ombudsmen’s Office, the decentralized territorial and institutional sector, the non-state public entities and public companies. When public funds are used either partially or totally, all other contracting conducted by individuals or companies will be submitted to the principles of this Law.</p> <p>When the term “Administration” is used in this Law, it refers to any of the subjects covered by its regulations.</p>		<p><b>Article 9.1: Ambit of Application and Coverage</b></p> <p>1. This chapter applies to any measure, including any act or directive issued by a Party, relative to the contracting covered.</p> <p>2. For the purposes of this Chapter, the <b>contracting covered</b> refers to procurement of merchandise, services or both:</p> <p>(a) through any contractual means, including purchase, renting or leasing, with or without the option to buy, contracts for construction-operation and contracts for the concession of public works;</p> <p>(b) listed and subject to the conditions stipulated in:</p> <p>(i) Annex 9.1.2(b)(i) which will apply between the United States and each of the Parties;</p> <p>(ii) Annex 9.1.2(b)(ii) which will apply between Central American Parties; and</p> <p>(iii) Annex 9.1.2(b)(iii) which will apply between each Central American Party and the</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT Dominican Republic
	<p><b>ARTICLE 2.- Exceptions</b></p> <p>The following activities are excluded from the procedures for tenders stipulated in this Law :</p> <p>b) The agreements entered into with other States or with subjects governed by international public law.</p> <p>The following activities are outside of the scope of this law:</p>		<p>(c) which is conducted by a contracting entity; and</p> <p>(d) which is not excluded from coverage.</p> <p>3. This Chapter does not apply to:</p> <p>(a) non-contractual agreements or any form of assistance that one Party or company of the State grants, including donations, loans, transfers of capital, fiscal incentives, subsidies, guarantees, cooperative agreements, government supply of merchandise and services to individuals and state, regional or local governments and procurement involving foreign assistance;</p> <p>(b) procurement financed by loans or donations in favor of a Party, including an entity of a Party, by an individual, international entities, associations, or other Party or Non-Party, to the extent to which said assistance is inconsistent with the stipulations of this Chapter;</p> <p>(c) the contracting of services, agencies or fiscal deposits, liquidation and administrative services for regulated financial institutions and sales and distribution services for public debt ;</p> <p>(d) the contracting of public employees and measures related to employment;</p> <p>(e) any merchandise or service that is part of</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
	<p>2. Public loans.</p> <p>The following activities are outside of the scope of this law:</p> <ol style="list-style-type: none"> <li>1. Employment relationships.</li> </ol>		<p>any contract that a contracting entity that is not listed in Sections A to C of Annex 9.1.2(b)(i), 9.1.2(b)(ii) and 9.1.2(b)(iii) awards: and</p> <p>(f) purchases made under conditions that are exceptionally favorable but which will transpire over a limited time frame, such as transfers of ownership conducted by companies that are not normally suppliers or the transfer of assets of businesses in liquidation or under judicial administration.</p>
			<p>4. Each Party must ensure that its contracting entities fulfill this Chapter in any of the contracting procedures covered.</p>
			<p>5. When a contracting entity awards a contract that is not covered by this chapter, nothing in this Chapter can be interpreted as applying to the merchandise or service involved in said contract.</p>
			<p>6. No contracting entity can prepare, design, structure or divide a procurement contract for the purpose of evading the obligations of this Chapter.</p>
			<p>7. None of the dispositions of this Chapter will impede a Party from developing new public contracting policies, procedures or contracting modalities if the same are incompatible with this Chapter.</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
<b>FRAGMENTATION PROHIBITED</b>	<p><b>Article 37. Fragmentation Prohibited</b></p> <p>The Administration cannot fragment procurement of goods and services for the purpose of varying the contracting procedure.</p>	<p><b>Article 40.1 Regulation of the General Administrative Contracting Law (Fragmentation Prohibited).</b></p> <p>The Administration may not fragment its procurement of goods and services nor the contracting of works with the purpose of varying the contracting procedure used.</p>	<p><b>Article 9.1: Ambit of Application and Coverage</b></p> <p>....</p> <p>6. No contracting entity can prepare, design, structure or divide a procurement contract in order to evade the obligations of this Chapter.</p>
<b>PRINCIPLE OF NATIONAL TREATMENT (NON-DISCRIMINATION)</b>	<p><b>Article 5. Principle of equality and free competition</b></p> <p>The equal participation of all potential tenderers will be respected in all tendering procedures.</p> <p>The regulations of this Law or the dispositions that govern the specific procedures of each contracting process may not include regulation that impedes free competition between potential tenderers.</p> <p>The participation of foreign tenderers will be governed by the principle of reciprocity, which offers them the same treatment as nationals. The Executive Branch will establish, through regulations, the dispositions necessary to ensure the full application of the principle covered in this paragraph.</p> <p>The tendering announcements and documents describing conditions may not stipulate forms of</p>	<p><b>Article 5.2 of the General Regulation of Administrative Contracting</b></p> <p>As a corollary of the principle of equality, the principle of free competition between tenderers will imply the impossibility of introducing clauses in the conditions of tenders that limit participation beyond those that are strictly derived from the technical specifications of the goods or service to be procured.</p>	<p><b>Article 9.2: General Principles</b></p> <p>1. With regard to any measure covered by this Chapter, each Party will concede to the merchandise and services of the other Party and to the suppliers of the other Party treatment that is no less favorable than that granted by said Party or contracting entity to its own merchandise, services and suppliers.</p> <p>With regard to any measure covered by the current Chapter, no Party may:</p> <ul style="list-style-type: none"> <li>concede less favorable treatment to a local supplier based on degree of association or foreign ownership; or</li> <li>discriminate against a supplier locally established based on the fact that the merchandise or services offered by said supplier for an specific service are merchandise or services of the other Party.</li> </ul>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
<p><b>PRINCIPLE OF PUBLICITY</b></p> <p>The contracting procedures will be publicized through pertinent channels. All interested parties will have free access to the administrative contracting file and the complementary information. In the first month of each budget period, the bodies and the entities subject to the regulations of this Law will publish the planned procurement program in the Official Paper. This act will not imply any commitment to contract. The Official Paper will have a section specifically dedicated to administrative contracting.</p> <p><b>Article 42.- Minimum structure.</b> Public tendering procedures will be conducted according to regulations, and will respect the following minimum criteria: a) ...</p>	<p>payment or contain any regulation that grants national suppliers less favorable treatment than that granted to foreign tenderers.</p>	<p><b>Article 124 of the Political Constitution of Costa Rica.</b> All bills under consideration are subjected to two debates, each held on non-consecutive days. The next step is obtaining approval from the Legislative Assembly and the Executive Branch. Finally, the Law is published in the Official Paper.</p> <p><b>Article 240 of the General Law of Public Administration</b></p> <p>1. General actions will be published and concrete measures will be communicated by notification. 2. When a general action affects a person in particular whose address is indicated on the file or is known to the Administration, the act must be published as a notification.</p> <p><b>Article 8 of the General Regulation of Administrative Contracting (Special section in the Official Paper)</b></p>	<p>3. For the purposes of paragraphs 1 and 2, the determination of the origin or merchandise will be conducted in a manner that is consistent with the Fourth Chapter (Regulation of Origin and Origin Procedures).</p> <p>4. With regard to the contracting covered, a contracting entity will abstain from considering, soliciting, or imposing special compensatory conditions in any stage of contracting.</p> <p>5. Paragraphs 1 and 2 do not apply to measures relative to customs duties or other fees of any kind that are imposed on imports or which are related to the same, or to the collection method of said duties or fees, other import regulations, including restrictions and formalities, or to the measures that affect trade in services other than the measures specifically covered by this Chapter.</p>
			<p><b>Article 9.3: Publication of the Measures used to Contract</b></p> <p>Each Party must (in a timely manner):</p> <p>(a) publish all of the law and its regulations as well as modifications regarding contracting;</p> <p>(b) make all procedures, judicial rulings and administrative decisions of general application related to contracting known to the public; and</p> <p>(c) at the request of a Party, provide said Party with a copy of the procedure.</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
<p><b>PRINCIPLE OF PUBLICITY (Continuation)</b></p>	<p>b) ... c) The publication in the Official Paper, of the tendering notification and invitation to participate.</p>	<p>8.1 A special section in the Official Paper "La Gaceta" will be developed to publish information on the following: 8.1.6. The resolutions of the Controller General's Office on matters of interest for administrative contracting operators. 8.1.8. The dispositions of the National Procurement Office as the supervisory technical body as well as other information of interest such as resolutions, statistics and reports that they generate. 8.2 Any communication that refers to 8.1.2, 8.1.3 and 8.1.4 should be published within 3 working days after said communication has been presented at the National Printing Office. This Office may set differentiated fees for information published in the special section on contract administration so as to cover costs and obtain a reasonable profit.</p> <p><b>General Administrative Contracting Regulation</b> <b>Article 46.- (Publication of the invitation)</b></p> <p>The invitation to participate will be published in the Official Paper "La Gaceta" and in the national or foreign papers chosen by the administration. The tendering documents and its annexes will be available to any interested party on the day that the invitation was published in the Official Paper on forward. The Administration has the right to charge printing or reproduction fees for said materials.</p>	<p>judicial ruling or administrative decision of general application related to contracting.</p>
	<p><b>ARTICLE 6.- Principle of publicity.</b></p> <p>Contracting procedures will be published in venues that are consulted by interested users. All interested parties should have free access to the administrative contracting file and any complementary information. In the first month of each budget period, the bodies and entities subject to the regulations of this Law will publish the planned procurement program in the Official Paper, which will not imply any commitment to contract. A bulletin will be inserted in the Official Paper as a special section dedicated exclusively to administrative contracting.</p>		<p><b>Article 9.4: Publication of Notifications of Future Contracting</b></p> <ol style="list-style-type: none"> <li>1. According to Article 9.9.2, a contracting entity will publish an advance notice inviting interested suppliers to present tenders for each contracting process covered.</li> <li>2. The information in each notice will include, as a minimum, a reference to the fact that the contracting is covered by the Chapter, a description of said contracting, any conditions required of the suppliers wishing to participate in the process, the name of the contracting entity, the address where any documentation related to the contracting can be obtained, and if applicable, any amount that must be paid for contracting documents, the deadlines and address at which tenders will be received, and the time allotted for the delivery of the merchandise or services contracted.</li> <li>3. Each Party will compel its contracting entities to publish information on future</li> </ol>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
			contracting plans at the earliest possible in the respective fiscal year.

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
<p><b>DEADLINES FOR SUBMISSION OF TENDERS</b></p>	<p><i>Decree No. 31658-H. Modification of Executive Decree No. 25038 of the 6th of March of 1996, published in the Official Paper La Gaceta No. 62 of the 28th of March of 1996, denominating the "Reglamento General de Contratación Administrativa"; specifically referring to articles 47.1 and 47.2, 48.1.1 and 48.1.2, 56.1, 57.1, 59.11 and 60.5. Published in the Official Paper La Gaceta, Number 42 of the 1st of March of 2004.</i></p> <p><b>Deadlines for placing tenders</b></p> <p><b>Public Tendering</b> The time frame for presenting tenders will be at least 20 working days in tendering processes for construction and for supplies that are either imported or need to be imported. The deadline for tenders related to all kinds of business will be at least 10 days. In public tendering for works concession, the deadline for presenting tenders will be at least 20 calendar days.</p> <p><b>Tendering by registry</b> Tenders must be presented within 8 working days in all cases.</p> <p><b>Restricted tendering</b></p>	<p><b>ARTICLE 9.5: DEADLINES FOR SUBMISSION OF TENDERS</b></p> <p>1. The contracting entity will give suppliers enough time to prepare and present tenders, according to the nature and complexity of contracting. Under no circumstances will the contracting entity stipulate a deadline that expires before 40 days after the date on which the notice of future procurement was published.</p> <p>2. Notwithstanding that established in paragraph 1, in the case that no criteria of evaluation exists to qualify suppliers, the contracting entity may a set period of less than 40 days but never less than 10 days under the following circumstances: (a) When a contracting entity has published a separate notice that contains a description of contracting, the approximate deadlines for the presentation of tenders, or, when appropriate, conditions for participation in contracting and the address where documentation relative to the contracting process can be found, within a period of no less than 40 days and no more than 12 months before the deadline for tender presentation; (b) in the case that an entity contracts merchandise or commercial services that are up for sale to, and which are regularly</p>	<p><b>ARTICLE 9.5: DEADLINES FOR SUBMISSION OF TENDERS</b></p> <p>1. The contracting entity will give suppliers enough time to prepare and present tenders, according to the nature and complexity of contracting. Under no circumstances will the contracting entity stipulate a deadline that expires before 40 days after the date on which the notice of future procurement was published.</p> <p>2. Notwithstanding that established in paragraph 1, in the case that no criteria of evaluation exists to qualify suppliers, the contracting entity may a set period of less than 40 days but never less than 10 days under the following circumstances: (a) When a contracting entity has published a separate notice that contains a description of contracting, the approximate deadlines for the presentation of tenders, or, when appropriate, conditions for participation in contracting and the address where documentation relative to the contracting process can be found, within a period of no less than 40 days and no more than 12 months before the deadline for tender presentation; (b) in the case that an entity contracts merchandise or commercial services that are up for sale to, and which are regularly</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
			<p>procured and utilized by, non-government buyers for non-governmental purposes;</p> <p>(c) when an unforeseen emergency arises that is duly justified by the contracting entity, it is impossible to meet the deadline set in paragraph 1.</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
<p><b>TENDERING DOCUMENTS</b></p>	<p><b>Article 42.- Minimum structure.</b>                      The public tendering procedure will transpire according to established regulations, respecting the following minimum criteria:                      a) ...                      b) The preparation of tendering documents, with the general conditions and the technical requirements, which will contain the bases to qualify and compare tenders.</p> <p><b>Article 40.- Communication by electronic means.</b>                      In order to communicate information on the procedure, the Administration must utilize any electronic means that guarantees that information has been received and verifies the content of the message.                      If necessary to ensure the efficiency of procurement procedures, the Administration may demand that tenderers and those listed in tendering registries provide e-mail addresses, fax numbers or telematic means through which official communications are delivered.                      The Regulation will define the conditions under which the Administration will receive tenders and specifications by the electronic means mentioned in the prior paragraph.</p>	<p><b>General Regulation of Administrative Contracting</b></p> <p><b>ARTICLE 45.- (CONTENTS OF TENDERING DOCUMENTS)</b></p> <p>45.1 The tendering documents must contained at least the following:                      45.1.1. A letterhead that identifies the Administrative Entity involved and the type of number of the tender and a brief description of the object of the contract;                      45.1.2 The cost and form of payment to acquire the tendering documents (Bases de Licitación) when said documents (Bases) are a necessary complement to the information published in the tendering documents;                      45.1.3 Information on the office that is handling the procurement process and which will provide necessary information on related specifications and documentation;                      45.1.8 Description of the nature and amount of the goods and services that are the object of the procurement process, including technical specifications, certificates of conformity and the corresponding designs and instructions.                      45.1.10 System to evaluate and compare offers, with the express indication of the factors to consider, the degree of importance of each in the overall evaluation of tenders, as well as the method to evaluate and compare tenders with regard to each factor in the evaluation;                      45.1.12 Precise information on the documents</p>	<p><b>ARTICLE 9.6: TENDERING DOCUMENTS</b></p> <p>1. Contracting entities will provide interested suppliers with the tendering documents that include all of the information needed to prepare and present adequate tenders. The tendering documents will include all the criteria that the contracting entity will consider to award a contract, including all of the factors of cost and their considerations, or, if the case so requires, the relative weight that will be assigned to these criteria in the tender evaluation.</p> <p>2. A contracting entity can meet the requirements in paragraph 1 through electronic means that are accessible to interested suppliers. When a contracting entity does not publish procurement documents accessible to all interested suppliers, it must, at the request of any supplier and without delay, provide written documents containing the corresponding information.</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
	<p>that must be presented to evaluate the tenderer on economic and technical aspects when a business is complex in nature;</p> <p><b>General Regulations of Administrative Contracting</b></p> <p><b>ARTICLE 47- (MODIFICATIONS CLARIFICATIONS OF THE TENDERING DOCUMENTS)</b></p> <p>47.1 Modifications to the conditions or specifications of the tendering documents must be announced through the same means utilized to announce the tendering process and notification must be made at least eight days before the deadline for receiving tenders.</p> <p>47.2 For these purposes, modifications do not include changes to the object of the tender and do not constitute a fundamental variation in the original concept of the tender.</p> <p>If a significant modification is introduced in the original conception of the object of the tender, the deadlines for receiving tenders will be extended according to the minimum requirements listed in numerals 48.1.1 and 48.1.2 and depending on the nature of the business deal.</p>	<p>3. If, during the course of a tendering process, a contracting entity modifies the criteria referred to in Paragraph<sup>32</sup>, it will transmit said modifications in writing:</p> <p>(a) to all of the suppliers that are participating in contracting at the time that the modification takes place and in cases where the identity of the participating suppliers is unknown, by utilizing the same communications method used to transmit information at the beginning of the process; and</p> <p>(b) with sufficient time to allow the suppliers to modify and resubmit tenders.</p>	

<sup>32</sup> Each Central American Party and the Dominican Republic can make modifications before the tendering process is opened. The United States can make said modifications before the contract is awarded.

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
<p><b>Technical Specifications</b></p>	<p>47.3 When involving only simple requests or rulings that do not require modification, the Administration must immediately incorporate the same into the file and adequately disseminate the information on the same.</p> <p><b>General Regulation of Administrative Contracting</b></p> <p><b>ARTICLE 45.3.- (CONTENTS OF THE TENDERING REQUIREMENT)</b></p> <p>The tendering documents cannot impose restrictions or demand the fulfillment of requirements that are not technically indispensable if this limits the participation of potential tenderers.</p>	<p><b>Article 9.7: Technical Specifications</b></p> <ol style="list-style-type: none"> <li>1. A contracting entity will not prepare, adopt, or apply any technical specification whose purpose or intention is to create unnecessary obstacles to trade between Parties.</li> <li>2. The contracting entity will set technical specification when:                             <ol style="list-style-type: none"> <li>(a) regarding performance instead of design or descriptive characteristics; and</li> <li>(b) based on international norms where applicable, on the contrary, nationally recognized norms.</li> </ol> </li> <li>3. A contracting entity will not set technical specifications that require or make reference to certain trademarks or brands, patents, designs or types, or specific origins except in cases that no other way exists to easily describe contracting requirements. Should this be the case, the contracting documents expressions such as "or equivalent to."</li> <li>4. A contracting entity will not solicit or accept, in any manner that may impede competition, advice that can be used to prepare and present any technical specification to specific contracting that is provided by an</li> </ol>	

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<p><b>PARTICIPATION REQUIREMENTS</b></p>	<p><i>Article 53.-- Prequalification</i></p> <p>The Administration may institute, as part of the public tendering or tendering by registry process, a prequalification procedure aimed at improving the chances of choosing the most favorable candidate. This process will consist in previously selecting candidates according to specific conditions.</p> <p>The prequalification conditions will expressly indicate the factors that will be utilized to choose the candidate and will assign a value to each factor. Notification of this prequalification will be published in the Official Paper.</p>	<p><b>General Regulation of Administrative Contracting</b></p> <p><b>ARTICLE 59-(TENDERING BY REGISTRY. CONDITIONS AND PROCEDURES)</b></p> <p>59.2 This type of procurement procedures assumes that a supplier registry exists that is accessible to all parties interested in contracting with the Administration if and only if said parties satisfy solvency requirements and have appropriate antecedents and experience. Each body or entity will establish the aforementioned according to internal regulations that are duly published in the Official Paper. In the case of the Central Government, the units operating under a deconcentrated setting should consult the pertinent Registry administered by the National Procurement Office.</p> <p>59.3 In order to maintain said registry up-to-date, the Administration will invite all interested parties to list on the registry through an invitation published in the Official Paper and two publications with national circulation. This invitation will be extended at least once a year. All</p>	<p>individual that has commercial interest in said contracting.</p> <p>5. The intention of this Article is not to impede a contracting entity from preparing, adopting or applying technical specifications to protect natural resources.</p>
		<p><b>Article 9.8: Requirements and Conditions for Participation in Contracting</b></p> <p>1. When an entity requires suppliers to fulfill registration or qualification requirements or any other requirement or condition to participate (conditions of participation) in a contracting process, the contracting entity will publish an announcement that gives interested suppliers enough time to prepare and present applications and allows for a sufficient period during which the entity can evaluate and formulate its decisions on the applications.</p> <p>2. Each contracting entity must:</p> <ul style="list-style-type: none"> <li>(a) limit conditions for participating in procurement solely to those that are essential to guaranteeing that the supplier possesses the legal, technical and financial capacity to fulfill the requirements and technical specifications of contracting;</li> <li>(b) recognize as qualified suppliers all applicants that have fulfilled the conditions to participate; and</li> <li>(c) base decisions on qualifications only on the conditions for participation that have been previously determined and published in announcements or in the contracting documents.</li> </ul> <p>3. The contracting entities may provide the public with list of suppliers that are qualified</p>	

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	<p>interested parties will have access to the information in said registries.</p> <p>59.10 Any non-registered supplier may participate in the tender along with invited participants if it is able to formalize inscription prior to the deadline for presenting a tender.</p> <p><b>General Regulation of Administrative Contracting</b></p> <p><b>ARTICLE 60.4-(RESTRICTED TENDERING. CONDITIONS AND PROCEDURE)</b></p> <p>60.4 The Administration, upon extending the respective invitation, will include a copy of the tendering conditions in a file or permanent registry that can be accessed by any supplier interested in participating in tendering for the purpose of guaranteeing the principles of equality and free competition. Potential tenderers may participate in the tender without having received the respective invitation if they are registered or if they are able to register before the deadline for tender presentation expires.</p> <p><b>General Regulation of Administrative Contracting</b></p>	<p>to participate in contracting. When a contracting entity requires suppliers to qualify for said list as a condition to participate in a procurement process and a non-qualified supplier requests qualification to be included on said list, the contracting entity will immediately initiate qualification procedures and will allow the supplier to present a tender when it is determined that the supplier in question is qualified, and if and only if there is enough time to fulfill the conditions for participation within the period established for tender presentation.</p> <p>4. No contracting entity will set the condition that the right to participate will be granted only to suppliers that have been awarded one or more contracts in the past by the contracting entity, or that the supplier must have work experience in the Party's territory. The contracting entity will evaluate the financial and technical capacity of the supplier according to the supplier's commercial activity both outside of the territory of the contracting entity and within the territory of the same if applicable.</p> <p>5. The contracting entity will notice (in a timely manner) any supplier that has requested qualification of the corresponding decision. Should the contracting entity deny a qualification request or indicate that a supplier is not qualified, said entity must, at the request of the supplier, provide a timely written explanation of the reasons behind the decision.</p> <p>6. Nothing in this Article will impede a contracting entity from prohibiting a supplier's participation in a procurement process when bankruptcy or false declarations are involved.</p>	

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<p><b>CONTRACTING PROCEDURES</b></p>	<p><i>THE GENERAL LAW OF ADMINISTRATIVE CONTRACTING PROVIDES DETAILS ON THE REGULATION OF OPEN PROCEDURES FOR PUBLIC CONTRACTING THROUGHOUT ITS ARTICLES: (PUBLIC TENDERING, TENDERING BY REGISTRY, AND AUCTIONS). DUE TO A LACK OF SPACE, WE WILL NOT INCLUDE ALL THE ARTICLES RELATIVE TO THESE PROCEDURES BUT INSTEAD WILL MAKE A SUMMARY OF EACH. TO ANALYZE A SPECIFIC ARTICLE, SEE THE GENERAL LAW OF ADMINISTRATIVE CONTRACTING AT</i></p>	<p><b>ARTICLE 65.5- (PREQUALIFIED TENDERING )</b></p> <p>Once the deadline for the reception of sworn statements has passed, the Administration will begin to review the applications received to date and will evaluate according to the rules established in the prequalification conditions. The agreement for prequalification should be published in the Official Paper if involving public tendering and communicated to participants in the case of tendering by registry. The prequalification procedure can be appealed before the Controller General's Office when the estimated amount of the respective contract is covered by the stipulations of Article 84 of the Law for Administrative Contracting.</p>	
		<p><b>Article 182 of the Political Constitution-</b> The contracts for the execution of public works entered into by the Branches of the State, Municipalities and autonomous institutions and the procurement made with the funds of these entities and the sale or leasing of goods belonging to the same will be conducted through tendering according to the law governing the respective amount.</p> <p><b>General Law of Administrative Contracting</b> 75.- Scope</p>	<p><b>Article 9.9: Contracting Procedures</b></p> <ol style="list-style-type: none"> <li>1. According to paragraph 2, a contracting entity will award contracts through open tendering procedures.</li> <li>2. As long as the contracting procedures are not used as a means to avoid competition or protect national suppliers, a contracting entity may award contracts by means other than open tendering procedures under the following circumstances:</li> </ol>

<sup>33</sup> The last up-date from the Controller General's Office was published in the Official Paper La Gaceta No 34, February 17, 2005.

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	<p><a href="http://www.cesdepu.com/leyes/7494.7-FEB-1995.htm">http://www.cesdepu.com/leyes/7494.7-FEB-1995.htm</a></p> <p><b>Public tendering:</b> (Article 41 and the following) apply in the following situations:</p> <p>a. Procurement for the amounts established in Article 27 of the Law for Administrative Contracting, which have been reviewed and up-dated by the Controller General of the Republic (CGR) on an annual basis.<sup>33</sup></p> <p>b. Any sale or transfer of goods, movables or immovable or leasing of public goods, except in the case of auction.</p> <p>c. In the concession of public installations.</p> <p><b>Minimum period within which tenders may be presented:</b> 30 working days on tendering for construction or works and for supplies that have been imported or need to be imported. In all other businesses, at least 25 working days will be allotted. In public tendering for works concessions, the at least 60 calendar days will be allotted for tender presentation.</p> <p><b>Tendering by registry:</b> (Article 44 and the following) applies to contracting for the amounts stipulated in Article 27 of the LGCA, which are reviewed and up-dated by the CGR on an annual basis. A supplier registry must exist and be accessible to all parties that are interested in contracting with the administration if and only if said parties fulfill the requirements set for this purpose.</p> <p><b>Minimum period for tender presentation:</b> 10 working days regardless of the object of the</p>	<p>75.1 The issues that are legally excluded from ordinary procurement procedures may be subjected to direct negotiation between the Administration and the contracting party in situations where the Administration is acting within its competence and the contracting party meets all of the legal and regulatory requirements to enter into the respective contract.</p> <p>75.2 The contractual activity that is legally excluded from the ordinary procedures for procurement must be aligned with general principles, any previous requirements, the rights and obligation of the parties, controls and the regime of prohibitions and sanctions foreseen in the Law for Administrative Contracting and will be submitted, in general, to higher level of fiscalization by the Controller General. In the case of the Central Government, said activity will also be submitted to the technical review and evaluation of the National Procurement Office.</p> <p>75.3 The determination of the conditions for the exclusion of the ordinary procedures is the exclusive responsibility of the Administration. In any case, a ruling must be pronounced and the results of any ruling recorded in files, as a matter or procedure.</p> <p><b>ARTICLE 79- (MATTERS EXCLUDED FROM ORDINARY PROCEDURES FOR CONTRACTING)</b></p>	<p>(a) in the absence of tenders that comply with the requirements established in the contracting documents as indicated in the announcement of future contracting or in the invitation to participate, including any condition for participation if and only if the requirements of the original notification or initial invitation have not been substantially modified;</p> <p>(b) in the case of works or art or for reasons related to the protection of exclusive rights of intellectual property such as patents or authors' rights or confidential information, or in the case that no competition exists for technical reasons, the merchandise or services can only be supplied by a specific supplier or no other reasonable alternative or substitute exists;</p> <p>(c) in the case that additional deliveries have been made by the original supplier that involve spare parts, expansions or continuous service for existing equipment, computer programs, services or installations, or when a supplier obligates the entity to procure merchandise or services that do no fulfill the requirements of compatibility with the existing equipment, computer programs, services or installations;</p> <p>(d) in the case of merchandise procured in a commodity market;</p> <p>(e) when a contracting entity procures prototypes or a product or service that has been developed at the request of the</p>

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	<p>tender.</p> <p><b>Restricted tendering:</b> (Article 47 and the following) applies to procurement for the amounts stipulated in Article 27 of the LGCA, which are reviewed and up-dated by the CGR. The Administrating must invite at least 5 accredited tenderers to participate in restricted tendering. When the number of tenderers is less than 5, the Administration will leave express evidence of the same in the administrative file and will invite accredited tenderers.</p> <p><b>Minimum period within which to present tenders:</b> 3 working days regardless of the object of the contract.</p> <p><b>Auction:</b> (Article 49 and the following) can be used to sell or lease goods, movables or immovables when the same constitute the most appropriate means to satisfy the Administration's interests. Except in the case of an unsuccessful auction, the base cannot be less than the amount of the appraisal given by the specialized body of the respective Administration or the appraisal provided by the General Office for Direct Taxation of the Ministry of Finance.</p> <p><b>Direct Contracting:</b> Although direct contracting is not explicitly regulated in the LGCA, Article 27 of said law stipulates that this modality can be applied to procurement for the amounts established in the same, which are reviewed and up-dated by the CGR. Article 83 and subsequent sections of the RGCA stipulated that the CGR may authorize, by way of a resolution, direct contracting when sufficient reasons exist to believe that this is the only way of satisfying the general interest or to avoid damage or harm to public interests. Any</p>	<p>Activities that by nature or circumstances are not subject to public tendering</p> <p>79.1 Loan contracts that only one individual can fulfill, such as the provision of articles produced exclusively by one manufacturer that cannot be replaced, genuine spare parts, goods or services of an artistic or literary nature can be entered into directly between the Administration and the supplier.</p>	<p>contracting entity and for the execution of, in a specific contract for research, experimentation, study or original development. Once said contacts have been executed, subsequent procurement of products or services will be adapted to the stipulations of this Chapter;</p> <p>(f) in the case of additional construction services that were not included in the original contract but which fall within the objectives of the original contracting documentation and which due to unforeseen circumstances are necessary to complete the construction services described. Nevertheless, the total value of the contracts awarded for said additional services will not exceed 50% of the amount of the original contract; or</p> <p>(g) to the extent strictly necessary due to emergencies caused by circumstances that were unforeseen by the contracting entity and which produce a situation where it is impossible to obtain merchandise and services in a timely fashion through open tendering procedures and where the use of said procedures will cause grave damages to the contracting entity, its responsibilities under its program or to the Party.</p> <p>3. A contracting entity must maintain registries or prepare written reports that indicate specific justifications for each contract awarded according to the stipulations of paragraph 2 in a manner that is consistent with Article 9.11.3.</p> <p><b>Article 83. Authorization for direct contracting</b></p> <p>83.1 The Controller General may authorize, through a resolution, direct contracting in situations not foreseen in the aforementioned</p>

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	<p>request that the Administration channels in this direction should contain a detailed justification of the circumstances under which ordinary procedures may be considered insufficient for the purposes at hand and will specify the budget resources that will be used and will provide details on the way in which the foreseen Contractor will be selected.</p>	<p>dispositions when sufficient reasons exist to believe that this is the only way of successfully satisfying the general interest or avoid damage or harm to public interests.</p> <p>83.2 The previous numeral contemplates all means of facilitating procurement conducted by the Supreme Tribunal of Elections during the period following the official call for elections and ending with the official declaration of election results.</p> <p>83.3 The request directed by the Administration must contain a detailed justification of the circumstances that have led to the utilization of procedures other than ordinary procedures and will specify the budget resources that will be used and will provide details on the way in which the Contractor foreseen will be selected.</p> <p>83.4 The Controller General's Office will rule on the request within 10 working days and will stipulate alternatives to ordinary procedures.</p> <p><b>Article 85.- Emergency Procedures</b></p> <p>85.1 Assumptions. When the Administration is faced with an emergency, it may rescind one or all of the formalities of the contracting procedures or create substitute procedures with the purpose of avoiding damage to the public interest, grave harm to persons or irreparable damage to physical objects.</p> <p>85.2 To utilize this emergency mechanism, the Administration needs the authorization of the Controller General's Office.</p> <p>85.3 The respective petition must be formulated before the supervisory body and must include all pertinent information. This petition must be</p>	

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CONTRACT AWARDS	<p><i>ARTICLE 4 PRINCIPLE OF EFFICIENCY</i></p> <p><i>ADMINISTRATIVE PROCUREMENT PROCEDURES ARE MEANT TO SELECT THE TENDER THAT IS IN THE PUBLIC'S BEST INTEREST AND WHICH FULFILLS THE ADMINISTRATION'S PURPOSES AND MISSION.</i></p>	<p>resolved within 10 working days after its submission. When petitions qualify, authorization can be conceded by telephone.</p> <p>85.4 Administrative silence on the part of the Controller General's office shall not be interpreted as constituting approval.</p> <p><b>General Regulation on Administrative Contracting.</b></p> <p><b>Article 49 Scope and effects of the tender</b></p> <p>49.1 The tender must fulfill requirements and be accompanied by the documentation and annexes stipulated in the tendering documents.</p> <p><b>Article 50. Tender format</b></p> <p>50.1 Tenders will be presented in writing, personally or by mail or through the electronic means stipulated in the tendering documents.</p> <p><b>Article. 56 Selection and award</b></p> <p>56.2 Once the preceding stage has been completed, the Administration will conduct tender evaluation according to the conditions and specifications of the tendering documents and pertinent regulatory norms. It will declare null any tenders that fail to fulfill essential aspects of the tendering bases or which are not in keeping with the legal framework.</p> <p>56.4 Tenders that have met legal, financial and technical requirements will be submitted to evaluation according to the parameters indicated in the tendering documents in order to determine which tender best satisfies the public interest.</p> <p>56.6 If the study referred to in previous articles indicates that none of the tenders fulfills the tendering requirements or despite satisfying requirements fails to serve the best interests of the public, the Administration will declare the tender void through a duly justified act. In these cases,</p>	<p><b>Article 9.10: Contract award</b></p> <p>1. The tenders presented to a contracting entity for an award process must be in writing and must fulfill, at the time of presentation, the essential requirements of the procurement documents provided by the entity to all participating suppliers. Tenders will be accepted from suppliers that fulfill the conditions for participation that the contracting entity has made available all interested parties.</p> <p>2. With the exception of cases in which the contracting entity has determined that a contract award goes against the public's best interest, the contracting entity will award a contract to the supplier that it has identified as being fully capable of executing the contract and whose tender is the most advantageous according to the requirements and criteria of evaluation set forth in the tendering documents.</p>

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		<p>the Administration will communicate its decision to the participants by the same means used to extend the original invitation.</p>	
<p><b>CONTRACT AWARDS</b> (next to be continued here)</p>		<p><b>General Law of Public Administration.</b>  <b>Article 239.-</b> All parties or a third parties whose rights or interests will be affected must receive information on said effects according to the stipulations of this Law.  <b>General Regulation of Administrative Contracting</b>  <b>Article 6.- Principle of Publicity</b>                      6.1..                      6.1.2. <i>Once a decision is made to contract, all interested parties will have access to the file kept of the contract, its annexes and complementary studies.</i>                      6.1.3...                      6.1.4. <i>The interested parties will have access to the technical studies on the tenders that were put together by the Administration, with the exception of those cases in which said availability can compromise one of the tenderers. The Administration should draw up an act indicating the reasons behind said decision</i>  <b>Article 56.- Selection and award</b></p>	<p>3. Contracting entities may not annul a contracting process or rescind or modify a contract that has been awarded for the purpose of evading the obligations of this Chapter.</p> <p><b>Article 9.11: Information on Contract Awards</b></p> <p>1. A contracting entity will not delay in informing the participating suppliers of decisions regarding contract awards. The contracting entity will, at the express request of the supplier whose tender was not selected, facilitate pertinent information regarding the said decision and the advantages of the winning tender.</p> <p>2. The contracting entity will, immediately after awarding a contract that is covered under this agreement, publish a notice that includes the following information on the award:</p> <ul style="list-style-type: none"> <li>(a) the name of the entity;</li> <li>(b) a description of the merchandise or services included in the contract;</li> <li>(c) the name of the supplier to whom the contract was awarded;</li> <li>(d) the value of the award; and</li> <li>(e) if the entity did not use an open</li> </ul>

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	<p><b>Article 101.- The need to inform</b></p> <p>The Administration will send a report to the Comptroller General's Office of the Republic that provides information on the contractual activity engaged in during this period. This report will provide, in the very least, details on the contracting procedures initiated, the awards made, the qualities of the contractor, the object and amount of the operations, the budget item that backs the expense and all other data of interest that are contemplated under regulation.</p>	<p>56.3 A tender can be rejected when the price asked is unacceptable, which will be understood as being:</p> <p>56.3.1. Excessive with regard to normal market prices or above a just or reasonable profit level;</p> <p>56.3.2 Is either severely damaging or non-remunerative for the bidder, that gives reason to suspect the bidder's non-compliance of his contractual obligations due to the insufficiency of the contract award amount. This will include an investigation to determine whether or not the bidder satisfies the conditions of participation and will be able to fulfill the terms of the contract;</p> <p>56.3.3 Unfair competition or collusive tenders, and</p> <p>56.3.4 That exceed the budget's possibilities and mean that the Administration will not have the means to utilize timely complementary financing;</p> <p>56.3.5 These suppositions must be proven and accredited by the Administration and the details must be included in a file following an adequate study. When the Administration identified the presence of the suppositions included in numeral 56.3.3, the Commission for Free Competition must be notified.</p> <p><b>Article 57. Public tendering Awards</b></p> <p>57.3 The award will be duly noted and published in the Official Paper.</p> <p><b>Article 59. Tendering by registry</b></p> <p>59.12 The Administration will apply the principles and norms of public tendering, particularly in that which concerns the preparation of tendering requirements and the conditions for selection and award to the extent that the same is compatible with the nature of tendering by registry.</p>	<p>tendering procedure, an explanation of the circumstances that justified the procedure utilized.</p> <p>3. A contracting entity will maintain registries and reports related to the contracting and award procedures covered by this Chapter, including the registries and reports stipulated in Article 9.9.3, for at least three years after the date the contract was awarded.</p>

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CONFIDENTIAL INFORMATION	<p><b>Article 60. Restricted tendering</b>                      60.6 The Administration will apply the principles and norms of public tendering, particularly in that which concerns the preparation of tendering requirements and the conditions for selection and award to the extent that the same is compatible with the nature of restricted tendering.</p>	<p><b>The General Law of Public Administration.</b></p> <p><b>Article 273.-</b>                      1. There will be no access to the portions of the file that may compromise State secrets or divulge confidential information on the opposing party or, in general, when an examination of said pieces may give a party undue privilege or an opportunity to illegitimately damage the Administration, another party or third parties that may or may not be listed in the file.                      2. It will be assumed that this applies, unless proven to the contrary, to ruling projects and the reports prepared for consulting bodies and their rulings before information of the latter has been made available.</p> <p><b>General Regulation of Administrative Contracting</b>  <b>Article. 6. Principle of Publicity</b></p> <p>6.1.5. Confidential tender documents that have been provided to credit particular evaluation requirements set forth by the Administration will not be accessible to interested parties or the public at large. The conditions stipulated in the tender should indicate which information will be considered confidential.</p>	<p><b>Article 9.12: Information Confidentiality</b></p> <p>1. Parties, their contracting entities and authorities will not divulge confidential information without the formal authorization of the individual that provided the information when said revelation could damage the commercial interests of an individual or could damage fair competition among suppliers.</p> <p>2. Nothing that is stipulated in this Chapter will impede a Party or its contracting entities from abstaining from divulging information if this:</p> <ul style="list-style-type: none"> <li>(a) constitutes an obstacle to complying with the Law;</li> <li>(b) is damaging to free competition between suppliers;</li> <li>(c) damages the legitimate commercial interests of specific suppliers or entities, including protection of intellectual property rights; or</li> <li>(d) is not in the public interest.</li> </ul>
GARANTIA E INTEGRIDAD DE LAS PRACTICAS DE	Article 100: Sanction of Ineligibility	<p><b>Reglamento General de Contratación Administrativa.</b>  <b>Article 106.- Sanctions applied to individuals.</b></p>	<p><b>Article 9.13: Guarantee of the Integrity of Contracting Practices</b></p>

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<p><b>CONTRATACION</b></p>	<p>The Administration or the CGR will declare the individuals or companies ineligible to participate in administrative contracting if the same: c) provide gifts, whether directly or indirectly, to employees involved in an administrative contracting procedure.</p>	<p><b>106.1</b> The individuals that incur in any of the actions listed in articles 99 and 100 of the Administrative Contracting Law while participating in Administrative Contracting procedures will be sanctioned with a warning and will be declared ineligible, respectively.</p> <p><b>106.2</b> A warning will be issued to the individual in the form of a written admonition indicating that particular behavior must be corrected. This measure should, where possible, avoid affecting the execution of guarantees where applicable and will constitute an antecedent to a declaration of ineligibility.</p> <p><b>106.3</b> The ineligibility sanction consists of impeding an individual from participating in all administrative contracting procedures for a period of one to five years, depending on the seriousness of the offense.</p> <p><b>106.4</b> The Controller General or the interested Administration, through written communication or complaint, will proceed with a warning or a declaration of ineligibility after hearing with the supposed offenders following a period of five working days during which allegations and evidence have been produced. If, during the course of this hearing, the Administration sees the need to obtain evidence, a new hearing will be initiated upon the presentation of the same. The interested parties will have three working days to present their cases, after which a definitive resolution will be handed down. The warning and notification of ineligibility must be sent to the offender at the address indicated on the file. The Administration must send a copy of any resolution it issues to the Controller General's Office. In cases where the Controller General issues resolutions, copies of the same must be sent to the pertinent Administration.</p> <p><b>106.5</b> The resolution of ineligibility will also be</p>	<p>According to Article 18.8 anti-corruption measures), each Party will adopt or maintain procedures to declare ineligibility to participate in the Party's contracting, whether indefinitely or for a specific period of time, those suppliers that have participated in illegal or fraudulent activities involving contracting. If requested by the other Party, the Party will identify any suppliers that have been declared ineligible under these procedures and when appropriate, will exchange information regarding these suppliers or the illegal or fraudulent activity.</p>

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		<p>published in the Official Paper as information pertinent to all Public Administration.</p> <p>106.6 Each Administration, the Controller General's Office and the National Procurement Unit in the case of the Central Government, will keep a registry of the sanctions ruled on and those imposed by the Administration and the National Procurement Unit. In the case of the Controller General's Office, a registry must be kept of all decisions affecting each Administration and the National Procurement Office. This registry will be readily accessible to any interested party.</p> <p><i>Penal Code</i></p> <p><b>Article 338- Passive corruption</b> Any public official that, either personally or through an intermediary, receives a gift or any other undue advantage or who accepts a promise to receive the same to carry out his or her functions will be subject to a prison term varying from six months to two years.</p> <p><b>Article 339- Active corruption</b> A public employee who, either personally or through a an intermediary, receives a gift or any other advantage or accepts a direct or indirect promise for payment of this nature to engage in an act that is contrary to his duties or who accepts to either not complete or delay completion of his functions will be subject to a prison term between ten to fifteen years and will be ineligible to hold public office for a period between ten to fifteen years.</p> <p><b>Article 340- Aggravated Corruption</b> If the facts of the case fall under the scope of the aforementioned articles and include the assignment of public posts, retirement,</p>	

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		<p>pensions, or the celebration of contracts involving the Administration for which the public employee works, the prison terms will be as follows:</p> <ul style="list-style-type: none"> <li>- passive corruption, from 1 to 5 years.</li> <li>- active corruption, 3 to 10 years.</li> </ul> <p>Article 341- Acceptance of gifts bases on results</p> <p><b>A public employee that accepts a gift or any other undue advantage that was not previously agreed upon for the results of an action within the realm of the duties of said employee or the omission of the same will be subjected to one third of the sentence indicated in Articles 338 and 339.</b></p> <p><b>Article 344- Illicit Enrichment</b></p> <p>A public employee that incurs in inappropriate conduct that is not criminal will be subject to a prison term of six months to two years if:</p> <ol style="list-style-type: none"> <li>1. He or she accepts any gift or promise of the same to use the influence of his or her position to pressure another public official so that the latter either engages or desists in acts relative to his or her functions;</li> <li>2. Uses confidential information or data of which he or she has knowledge due to his to his post for either personal profit or the profit of third parties;</li> <li>3. Admits gifts that were either presented or offered due to his or her position while in public office; and</li> <li>4. Fails to justify the source of a considerable increase in patrimony that occurred after assuming public office.</li> </ol> <p><u>Bribing of public officials:</u></p>	

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
		<p>The Penal Code also typifies situations in which an individual induces a public employee to commit illicit acts in Article 343</p> <p><b>ARTICLE 343- Punishment for the corrupter</b></p> <p>The penalties set forth in articles 338, 339, 340 and 341 are applicable to those than either extend or promise gifts or undue advantages to public employees.</p>	
<b>EXCEPTIONS</b>			<p><b>Article 9.14: Exceptions</b></p> <p>1. If said measures are not utilized as a means of arbitrary or unjustifiable discrimination between Parties when the same conditions are in place or a restriction covered under trade agreements exists, none of the dispositions of this Chapter will be interpreted as impeding a Party from adopting or maintaining measures that:</p> <ul style="list-style-type: none"> <li>(a) are necessary to protect public morals, security or order;</li> <li>(b) are necessary to protect human health or life, and animal or vegetal life;</li> <li>(c) are necessary to protect intellectual property; or</li> <li>(d) are related to merchandise or services provided by handicapped people, philanthropic institutions or prison populations.</li> </ul> <p>2. The Parties understand that paragraph 1(b) include environmental measures necessary to protect human health and life and animal and vegetal life.</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
<p><b>OBJECTIONS RAISED BY SUPPLIERS</b></p>	<p><b>CHAPTER IX Resources</b>  <b>ARTICLE 81.- Deadlines and competent bodies</b>                      Objections can be raised within the first third of the period during which tenders must be presented. These objections may include complaints regarding the public tendering requirements listed for a particular procedure or the description of conditions for tendering by registry. This action will be presented before the Controller General's Office of the Republic in cases involving public tendering and tendering by registry and before the contracting entity in the case of restricted tendering.  <b>ARTICLE 82.- Justification and suppositions.</b>                      Any potential tenderer or his or her representative may present a objection recourse when he believes that the procedure has been conducted improperly or represents a violation of the fundamental principles of contracting; or shows signs that the regulatory framework has not been applied in some way. Additionally, it will be considered legitimate for any entity that has been legally constituted to protect the interests of the community where the contract is to be executed (or community that will be affected by said execution) to raise objections to the tendering requirements listed on the respective conditions as posted.  <b>ARTICLE 83.- Resolution</b>                      The appeal recourse should be resolved within ten working days of its submission.                      If it is not resolved within this period, it will be understood that the objection has been accepted.  <b>Article 84.—Coverage of the recourse and the competent body</b>                      With regard to an objection to an award act, the appeal recourse applies under the following circumstances:</p>	<p><b>General Regulation of Administrative Contracting.</b></p> <p><b>Article 93.- Admissibility procedure</b>                      In order to avoid undue obstacles to administrative activity, the Controller General's Office will be obligated to carefully analyze, within the ten day period following the expiration of the deadline to appeal, its admissibility and whether or not it proceeds. This period should be used to detect unacceptable aspects of a claim and proceed to reject the same.</p> <p><b>Article 96.- Initial procedure</b>                      96.1 The initial procedure to admit an appeal should be adopted no later than the 10th working day after the deadline for appeals has expired. If this procedure is not initiated within the period stipulated, the Controller General's Office will determine the disciplinary and personal responsibility of the official in charge.                      96.2 This initial procedure will allow the Administration and the winning party 5 working days to render testimony regarding the appellant's allegations. In the case of Ministries that conduct deconcentrated contracting, a hearing will also take place before the National Procurement Office.                      RCA A. 91.1 The appeal recourse of the award act will be filed within ten working days after it was communicated before the Control General's Office. When the award is announced through notification, the period for appeal will begin on the day after the last party is notified.</p>	<p><b>ARTICLE 9.15: NATIONAL REVIEW OF SUPPLIER OBJECTIONS</b></p> <p>1. Each party will establish or designate at least an administrative or judicial party who is impartial and independent from its procuring entities to receive and review the objections submitted regarding the obligations of the Party and its entities under this chapter and to issue resolutions and pertinent recommendations. Whenever an authority that is not the impartial authority initially reviews an objection submitted by a supplier, the Party will guarantee that suppliers can appeal the initial decision before the impartial administrative or judicial party that is independent of the procuring entity that is the subject to the objection.</p> <p>2. Each party will stipulate that the authority established or designated in paragraph 1 will be able to take opportune precautionary measures while a ruling on the objection is being decided in order to preserve an opportunity for</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
	<p>a) In the administrations cited in sub-paragraph a) of Article 27 of this law when the award amount objected to exceeds 90 million colon (¢ 90.000.000,00).</p> <p>b) In the administrations cited in section b) of Article 27 of this Law when the award amount objected to exceeds twenty-five million colon (¢ 25.000.000,00).</p> <p>c) In the administrations cited in section c) of article 27 of this Law, when the amount of the award objected to exceeds twenty million colon (¢ 20.000.000,00).</p> <p>d) In the administrations cited in section d) of article 27 of this Law when the award amount objected to exceeds fifteen million colon (¢ 15.000.000,00).</p> <p>e) In the administrations cited in section e) of article 27 of this Law when the award amount exceeds ten million colon (¢ 10.000.000,00).</p> <p>f) In the administrations cited in section f) of article 27 of this Law when the award amount objected to exceeds eight million colon (¢ 8.000.000,00).</p> <p>g) In the administrations cited in section g) of article 27 of this Law when the amount of the award objected to exceeds six million colon (¢ 6.000.000,00).</p> <p>h) In the administrations cited in section h) of article 27 of this Law when the amount of the award objected to exceeds five million dollars(¢ 5.000.000,00).</p> <p><b>ARTICLE 85.- Legitimacy</b> All individuals that have a legitimate, current, individual and direct interest may file an appeal recourse. Those who have presented a tender in representation of another that can prove power of representation may file an appeal.</p> <p><b>ARTICLE 86.- Admissibility.</b></p>	<p><b>Article 98.- Conclusions</b> Previous to the handing down of a final ruling, the Controller General's Office will concede the parties 3 working days to formulate conclusions on the matter at hand. The parties should declare whether or not the application of an administrative sanction contemplated in article 87 of the Law of Administrative Contracting proceeds or not.</p> <p><b>Article 88.- Legal basis of the recourse.</b> The appeal recourse should precisely indicate the alleged substantial infringement of the law as the basis of any objection. When disagreement arises regarding the technical evaluations or scientific opinions that have motivated the Administration to adopt a specific decision, the appellant must formulate a reasonable rebuttal. If possible, this should include the submission of opinions and studies issued by professionals qualified to speak on the issue in question.</p> <p><b>Article 99.- Final ruling</b> 99.1 The final ruling should be adopted at least thirty working days after the recourse procedure has been admitted. This period may be extended by 15 more working days only in cases where an extension has been granted due to the need to receive evidence. 99.2 If, during the discovery process of the appeal, the Controller General's Office detects evidence of cause to nullify the objection, the parties will be notified so that they can provide testimony regarding this point.</p> <p><b>Article 100.- Effects of the ruling</b> 100.1 The resolution that declares the nullification</p>	<p>correction of a potential non-compliance with the present Chapter, including an act to suspend a contract award that has already been granted.</p> <p>3. Each party will ensure that its case review procedures are available to the public in writing and that said procedures are timely, opportune, transparent, efficient and compatible with the principle of respect for due process.</p> <p>4. Each party will guarantee that all the documents related to the objection to a contract award are available to any impartial authority established of designated according to paragraph 1.</p> <p>5. A contracting entity will answer the supplier's claim in writing.</p> <p>6. Each party will ensure that the impartial authority established or designated according to paragraph 1 gives suppliers the following:</p> <p>(a) sufficient time to prepare and submit objections in writing; under no circumstances will the time allotted be less than 10 days from the moment that the supplier is made aware of the basis of the claim or has had sufficient time to become aware of the same;</p> <p>(b) an opportunity to review relevant documents and be heard by an authority in due time;</p> <p>(c) an opportunity for the contracting entity to respond to the supplier's claim; and</p> <p>(d) the immediate delivery of written conclusions and recommendations regarding the objection accompanied by an explanation of the bases used to make a decision.</p> <p>7. Each Party will guarantee that the objection of one supplier will not damage</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
	<p>The Controller General of the Republic The Controller General of the Republic will begin to process the recourse within 10 working days or will indicate the rejection or inadmissibility of the same. This competence can be exercised at any stage of the procedure where fact finding is conducted.</p> <p><b>ARTICLE 88.- Legal basis of the recourse.</b> The appeal recourse should precisely indicate the substantial infringement that is alleged. This will serve as the basis of the legal argument. When there are discrepancies regarding technical evaluations or scientific conclusions that the Administration has used to make its decision, the appellant may present a reasonable rebuttal by submitting opinions or studies submitted by qualified professionals.</p> <p><b>ARTICLE 89.- Resolution Deadline</b> The appeal recourse must be resolved within forty working days after the initial presentation of a claim.</p> <p>Under certain circumstances and when it is necessary to gather essential evidence that is complex in nature and which cannot be presented by the deadline indicated above, the period for presentation will be extended by twenty working days.</p> <p><b>ARTICLE 90.- Once the administrative route has been exhausted.</b></p> <p>The administrative review process will come to an end with the presentation of a final resolution or the issuance of a decision to end a recourse process. The interested party may, within three days following the communication of the decision, object to the final act, without suspensive effects, before the Superior Tribunal for Contentious-Administrative Matters by way of a special practice regulated by articles 89 and 90 of the</p>	<p>of a recourse will lead to an award act and will signify the end of the administrative process. 100.2 When the resolution is declared- either partially or totally- as apt to proceed, the Controller General's Office will annul the act objected to and will send the file to the Administration so that a new award can be determined if there are other eligible and advantageous tenders. If no other qualifying tenders exist, the Administration can declare the process null and void. In any case, the Administration should respect the considerations and the dispositions set forth in the resolution. 100.3 The final decision will be communicated to the parties within three working days at the location indicated within the central region of San Jose or by the electronic means designated by the party. If this instruction is not applied, the parties will be considered notified two working days after the decision is adopted.</p>	<p>damages the supplier's participation in tendering processes that are under way or will take place in the future.</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
	<p>regulatory Law of the contentious-administrative jurisdiction.</p> <p>If a contract award that is already in the execution stage or beyond the same is objected to, a favorable ruling for the appellant will recognize only payment for damages or harm caused.</p> <p><b>ARTICLE 91.- Coverage and deadlines.</b></p> <p>When a appeal recourse does not proceed due to the amount of the award, a repeal of the award act may be requested within the five working days following the communication of the ruling. Nevertheless, when the ruling authority of the body or entity has not reached a decision, the interested party may lodge an appeal before the respective ruling authority.</p> <p><b>ARTICLE 92.- Recourse procedure.</b></p> <p>The recourse will follow these steps:</p> <ol style="list-style-type: none"> <li>a) It will be presented before the same body that handed down the decision.</li> <li>b) The repeal process will follow the rules for appeals with regard to the presentation of evidence and arguments.</li> <li>c) If the submission is not declared contrary to the law, the Administration will notify the party that was the object of the award so that he may, within forty-eight hours after notice has been made, so that the party can pronounce on the recourse within three working days.</li> <li>d) The Administration should pronounce on the matter within the 15 working days following the response to the recourse.</li> <li>e) The resolution handed down by the Administration will end the administrative review process; nevertheless, objections may be filed within the three days following the communication of the decision by means of a special process regulated by articles 89 and 90 of the Regulating Law of Contentious-Administrative jurisdiction.</li> </ol>		

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
MODIFICACIONES A LA COBERTURA	f) If the contracting award objected to is in the process of being executed or has been executed, a favorable ruling for the appellant will be recognized on in terms of payment for damages and harm caused.		<p><b>ARTICLE 9.16: MODIFICATIONS AND RECTIFICATIONS OF COVERAGE</b></p> <p>1. A Party may make technical rectifications of a purely formal nature with regard to the coverage of this Chapter or minor modifications to its Lists for Sections A to C, Annexes 9.1.2(b)(i), 9.1.2(b)(ii) and 9.1.2(b)(iii) if and only if the other Parties are notified in writing and no other Party objects in writing within the 30 days following notification. A Party that makes said rectification or minor modification will no be obligated to pay compensation to the other Parties.</p> <p>2. A Party may modify its coverage under this Chapter if and only if:</p> <p>(a) it notifies the other Parties in writing and no other Party objects in writing within the 30 days after the notification and</p> <p>(b) with the exception of that which is stipulated in paragraph 3, will offer the other Parties, within 30 days after the notification date, any reasonable compensation to maintain a level of coverage that is comparable to that which existed prior to the modification.</p> <p>3. The Parties will not concede compensatory adjustments in cases where the modification proposed covers one or more procuring entities upon which the Parties agree that undue governmental influence has been effectively eliminated. In the case that the Parties do not agree that said control or influence has been effectively eliminated, the Party of Parties objecting to the recourse may demand more information or clarifications to determine the true nature of the control or influence and reach an agreement regarding the continuity of the contracting entity's coverage under this Chapter.</p> <p>4. The Commission will modify the section corresponding to Annexes 9.1.2(b)(i), 9.1.2.(b)(ii) and</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
			9.1.2(b)(iii) to reflect any modification agreed upon or technical rectification or minor modification.

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
DEFINITIONS			<p><b>ARTICLE 9.17: DEFINITIONS</b></p> <p>For the purposes of this Chapter:</p> <p><b>special compensatory conditions</b> refer to: the conditions or commitments, imposed or considered by a procuring entity, that promote local development or improve the account balance of a Party through the use of local content requirements, licenses for technology, investment, commercial compensation or similar requirements;</p> <p><b>a build-operate-transfer (BOT) and contracts for the concession of public works</b> refers to any contractual agreement for construction or refurbishing of physical infrastructure, floors, buildings, installations or other public works and under which a contracting entity grants the contractor a specific period of time to have temporary control over a property, if such temporary control is allowed by the contracting entity, or the right to control, operate and demand the payment for the use of such works;</p> <p><b>contracting entity</b> refers to an entity listed in Annexes 9.1.2(b)(i), 9.1.2(b)(ii) and 9.1.2(b)(iii);</p> <p><b>written or in writing</b> refers to all verbal or numerical expressions that can be read, reproduced and later communicated and includes information transmitted and stored electronically;</p> <p><b>technical specification</b> refers to a specification that establishes the characteristics of merchandise to be acquired or the processes and methods of complementary production or the characteristics of services to be procured or any related operational methods, including applicable administrative dispositions and requirements related to the evaluation procedures of a specific entity. A technical specification can also include</p>

TOPIC	GENERAL LAW FOR ADMINISTRATIVE PROCUREMENT (LGCA) No. 7494	OTHER LEGAL REFERENCES	Chapter 9 of DR-CAFTA PUBLIC PROCUREMENT
			<p>or refer exclusively to issues relative to terminology, symbols, packaging, or labeling instructions applicable to merchandise, process, service, or the method of production or operation;</p> <p><b>open tendering procedures</b> refers to any contracting method used by a Party with the exception of methods for direct contracting, which responds directly to the stipulations in Article 9.9.2 when said methods are consistent with this Chapter ;</p> <p><b>supplier</b> means any individual that has foreseen the provision of, provides or could provide merchandise or services to a contracting entity;</p> <p><b>publish</b> means to disseminate information through electronic means or in print. This information is widely distributed and easily accessible to the general public; and</p> <p><b>SERVICES INCLUDES CONSTRUCTION SERVICES UNLESS OTHERWISE SPECIFIED</b></p>
			<p><b>See the dispositions in the Annexes on public contracting coverage.</b></p>

**ANNEX B**  
**COMPARATIVE MATRIX CAFTA'S COVERAGE**

**Entities at the Central Government Level**

TOPIC	USA <sup>35</sup>	CENTRAL AMERICA <sup>36</sup> CAFTA <sup>34</sup>	DOMINICAN REPUBLIC <sup>37</sup>
<b>Goods:</b> applies to all merchandise procured by the entities covered, subject to the Notes in the respective Sections and the General Notes.	US\$58,550. In the case of CA and RD countries, for the first three years after the FTA comes into effect, US\$117,100.	Applies to all the merchandise procured by the entities covered	Applies to all merchandise acquired by the entities covered, except for arms, munitions, materials for war or any other contracting that is indispensable for national security, public safety or national defense.
<b>Services:</b> applies to those contracted by the entities covered, subject to the Notes in the respective Sections, the General Notes and the Notes for this section, with the exception of services excluded from the list of each party. All the services covered by this Section are subject to the measures	US\$58,550. In the case of CA and RD countries for the first three years after the Treaty comes into effect, US\$117,100.	Applies to all services procured by the entities covered.	Applies to all services procured by the entities covered.

<sup>34</sup> As has already been mentioned, despite the fact that the CAFTA norms are multi-lateral in application, the agreement has different coverage between countries. In the case of the US, the Chapter only applies to contracting with covered entities that is for amounts that exceed the threshold while for Central American countries and the Dominican Republic, the coverage is much wider due to the fact that it does not exclude government entities or stipulate thresholds.

<sup>35</sup> The monetary thresholds established must be adjusted according to Section H of this Annex. Anexo 9.1.2(b)(i) of DR-CAFTA.

<sup>36</sup> This Chapter does not apply to the contracting by a Costa Rican entity relative to merchandis or services that are obtained or procured from another Costa Rican entity; to the procurement programs of the public administration aimed to favor small, medium and micro businesses. The period of 40 working days established in Article 9.5.1 will not apply to the Costa Rican Institute of Electricity ("ICE"). The ICE will give suppliers enough time to prepare and present comprehensive tenders. Notwithstanding the stipulations of Article 9.15.6(a), the ICE will give at least 3 working days for suppliers to prepare and present their objections in writing.

<sup>37</sup> This Chapter does not apply to the activities excluded from public tender procedures under Article 2 of the Law for Administrative Contracting N. 7494 of May 2, 1995 employment, public works contracting, the concession of public installations, the concession of works for public services, the transfer in general of immovable goods or any other type of contracting that is different from that established in the Law for Administrative Contracting that does not involve the procurement of goods and services other activities and public procurement that internal legislation submits to a special contracting that differs from that established in the Law for Administrative Contracting N. 7494 of May 2, 1995 and its regulation, not barring that stipulated in the second paragraph on this list. The procurement conducted by the Social Security Office of Costa Rica, under the procedures established in Law 6914 of November 15, 1983, will be covered by the ambit of application and the other dispositions of this Chapter with the sole exception that this procurement will not be subject to the stipulations of Articles 9.6 and 9.15. In the case of the Costa Rican Institute of Electricity, ("ICE") the period of 40 days established in Article 9.5.1 will not apply. The ICE will give its suppliers enough time to prepare and present comprehensive tenders. Not barring that established in Article 9.15.6(a), the ICE will grant no less than 3 working days for suppliers to prepare and present objections in writing.

TOPIC	USA <sup>35</sup>	CAFTA <sup>34</sup> CENTRAL AMERICA <sup>36</sup>	DOMINICAN REPUBLIC <sup>37</sup>
<p>listed on the List of each Party to Annex I..</p> <p><b>Construction services:</b> applies to all constructions services of the Parties contracted by the entities covered, subject to the Notes corresponding to each Section and the General Notes. All of the construction services covered by this Section are subject to the measures listed in the list of each Party to Annex I.</p>	<p>US\$ 6,725,000. In the case of CA and RD countries, for the three years following the date on which the FTA comes into effect, US\$8,000,000.</p>	<p>Applies to all construction service procured by the entities covered.</p>	<p>This Chapter does not apply to construction of public works or to the concession of public works in general; not withstanding each Central American Party and the Dominican Republic will initiate consultations to determine the viability and utility of including public works construction and the construction of public works in general within the coverage of this Chapter.</p>
<p>Entities covered for Costa Rica</p>	<p>APPLIES TO ALL ENTITIES COVERED ON COSTA RICA'S LIST<sup>38</sup></p>	<p>Applies to all entities</p>	<p>Applies to all entities except those included on Costa Rica's list.<sup>40</sup></p>

<sup>38</sup> Entities covered by the agreement: Controller General of the Republic, Ombudsmen's Office, Presidency of the Republic, Ministry of the Presidency, Ministry of Government, Policy and Public Safety, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Agriculture and Livestock, Ministry of Economy, Industry and Commerce, Ministry of Public Works and Transports, Ministry of Public Education, Ministry of Health, Ministry of Labor and Social Security, Ministry of Culture, Youth and Sports, Ministry of Justice and Pardon, Ministry of Housing and Population Resettlement, Ministry of Foreign Trade, Ministry of National Planning and Economic Policy, Ministry of Science and Technology, the Ministry of the Environment and Energy, Ministry of Women's Affairs, Costa Rican Institute of Tourism.

**Government Entities at the Sub-Central Level**

TOPIC	CAFTA		
	USA	CENTRAL AMERICA	Dominican Republic
<b>Goods:</b> applies to all merchandise procured by the entities covered, subject to the Notes in the respective sections and the General Notes.	US\$477,000. In the case of CA and RD countries, for the three years following the date that the Treaty comes into effect, US\$650,000.	Applies to all the merchandise procured by the entities covered.	Applies to all merchandise procured by the entities covered, except for the purchase of arms, munitions, materials of war or any other contracting that is indispensable for national security, public security, or purposes of national defense.
<b>Services:</b> applies to those contracted by the entities covered, subject to the Notes in the respective Sections, the General Notes and the Notes for this Section, with the exception of the measures listed on the List of Each Party to Annex I.	US\$477,000. In the case of CA and RD for three years after the Treaty comes into effect, US\$650,000.	Applies to all services procured by the entities covered.	Applies to all services procured by the entities covered.
<b>Construction services:</b> applies to all construction services contracted by the entities covered, subject to the Notes in the respective sections and the General	US\$6,725,000. In the case of the CA and RD countries, for the three years after the date that Treaty comes into effect, US\$8,000,000.	Applies to all construction services procured by the entities covered.	This Chapter does not apply to the construction of public works or the concession of public works in general. Nevertheless each Central American Party and the Dominican

1. <sup>39</sup> NOTES ON COSTA RICA'S LIST: MINISTRY OF GOVERNMENT, POLICY AND PUBLIC SECURITY: THIS CHAPTER DOES NOT APPLY TO CONTRACTING OF MERCHANDISE CLASSIFIED IN SECTION 2 (FOOD PRODUCTS, LIQUORS AND TOBACCO, TEXTILES, CLOTHING, LEATHER PRODUCTS) OF THE CENTRAL CLASSIFIER OF PRODUCTS 1.0 (CPC, VERSION 1.0) OF THE UNITED NATIONS, FOR THE ARMED FORCES. MINISTRY OF FINANCE: THIS CHAPTER DOES NOT APPLY TO THE ISSUANCE OF TAX STAMPS. MINISTRY OF PUBLIC EDUCATION: THIS CHAPTER DOES NOT APPLY TO THE SERVICES CONTRACTED FOR SCHOOL CAFETERIAS.

<sup>40</sup> Costa Rica's list: non-state public entities whose financing is self-generated (50%), from contributions of members, public businesses whose working capital belongs, in its majority, to private individuals and not to the public sector, including the: Banco Central de Costa Rica, Banco de Costa Rica, Banco Nacional de Costa Rica, Banco Popular y de Desarrollo Comunal, Banco Crédito Agrícola de Cartago, Banco Hipotecario de la Vivienda and the entities that are excluded by internal legislation from the application of the administrative contracting contained in the Law for Administrative Contracting No. 7494, May 2, 1995.

TOPIC	USA	CAFTA CENTRAL AMERICA	Dominican Republic
Notes. All construction services covered by this section are subject to the measures listed in the List for each Party to Annex I.			Republic will initiate inquiries for the purpose of determining the viability and aptness of including the construction of public works and the concession of public works in general.
Entities covered by Costa Rica	Only the municipalities on Costa Rica's list. <sup>41</sup>	Applies to all municipalities.	Applies to all entities, except for those included on Costa Rica's list. (See footnote 7.)

<sup>41</sup> Municipalities of : Abangares, Acosta, Aguirre, Alajuela, Alajuelita, Alfaro Ruiz, Alvarado, Aserrí, Atenas, Bagaacs, Barba, Belén, Buenos Aires, Cañas, Carrillo, Cartago, Corredores, Coto Brus, Curridabat, Desamparados, Dota, El Guarco, Escazú, Esparza, Flores, Garabito, Goicoechea, Golfito, Grecia, Guácimo, Guatuso, Heredia, Hojancha, Jiménez, La Cruz, La Unión, León Cortés, Liberia, Limón, Los Chiles, Matina, Montes de Oro, Mora, Moravia, Nandayure, Naranjo, Nicoya, Oreamuno, Orotina, Osa, Palmares, Paraiso, Parrita, Pérez Zeledón, Poás, Pococí, Puntarenas, Puriscal, San Carlos, San Isidro, San José, San Matco, San Pablo, San Rafael, San Ramón, Santa Ana, Santa Bárbara, Santa Cruz, Santo Domingo, Sarapiquí, Siquirres, Salamanca, Tarrazú, Tibás, Tilarán, Turrialba, Turrubares, Upala, Valverde Vega and Vásquez de Coronado

## Other Entities Covered

TOPIC	CAFTA		
	USA	CENTRAL AMERICA	DOMINICAN REPUBLIC
<b>Goods:</b> applies to all merchandise procured by the entities covered subject to the Notes in the respective Sections and the Notes to the corresponding sections and the General Notes.	Entities on List A, US\$250,000. De Entities on List B, US\$538,000.	Applies all merchandise procured by the entities covered.	Applies to merchandise acquired by the entities covered, except for the purchase of arms, munitions, materials of war or other contracting that is indispensable for national security, public safety or national defense.
<b>Services:</b> applies to those contracted by the entities covered, subject to the Notes in the respective Sections and the General Notes with the exception of services excluded from the List of each Part to Annex I.	Entities on List A, US\$250,000. Entities on List B, US\$538,000.	Applies to all the services procured by the entities covered.	Applies to all the services procured by the entities covered.
<b>Construction services:</b> applies to all construction services of all the Parties contracted by the entities covered, subject to the corresponding Notes in each Section and the General Notes. All the construction services covered in this Section are subject to the measures listed in the List of each Party to Annex I.	For contracting of construction services by the entities on Lists A and B: US\$6,725,000. In the case of CA and RD, for the three years following the date on which the treaty comes into effect, US\$8,000,000.	Applies to all the construction services procure by the entities covered.	This chapter does not apply to construction of public works or concessions of public works in general. Nevertheless, each Central American Party and the Dominican Republic may initiate inquiries to determine the viability and convenience of including the construction of public works and the concession of public works in general in this Chapter's coverage.
Entities covered.	Only those covered on List A <sup>42</sup> and List B. <sup>43 44</sup>	Applies to all the municipalities.	Applies to all entities with the exception of those included on Costa Rica's list. (See footnote 7).

<sup>42</sup> Entities covered on List A: Costa Rican Railway Institute (INCOPER), Costa Rican Institute of Pacific Ports (INCOP), Board of the National Mint, Program for Livestock Marketing (PIMA), Regulatory Authority for Public Services (ARESEP), Bank for Housing Mortgages (BANHVI), Public Transport Council, Costa Rican Institute of Sports and recreation, National Institute for Cooperative Development (INFOCOOP), National Service of Underground Water Systems, Irrigation and Winnowing and the Central Bank of Costa Rica.

<sup>43</sup> Entities covered on List B: Social Security Office of Costa Rica and the Costa Rican Institute of Electricity

<sup>44</sup> Notes on Costa Rica's list:

- Central Bank of Costa Rica: This Chapter does not apply to the issuance of bills and coins and tax stamps.
- Social Security Office: This Chapter does not apply to the contracting of merchandise classified under Section 2 (food products, liquors and tobacco; textiles, clothing and leather products in the CPC version 1.0).
- Costa Rican Institute of Electricity ("ICE"):
  - (a) The period of 40 days established in Article 9.5.1 does not apply to ICE. The ICE will give its suppliers enough time to prepare and present comprehensive tenders.
  - (b) Notwithstanding that stipulated in Article 9.15.6(a), the ICE will give no more than 3 days to suppliers to prepare and present written objections.
  - (c) At the request of the United States, Costa Rica will consult on the implementation of the time frames referred to in sub-paragraphs (a) and (b).



**ANNEX IV. EVALUATION OF THE COMPARED SYSTEM**



BANCO INTER AMERICANO DE DESARROLLO



BANCO MUNDIAL

# **COSTA RICA**

## **EVALUATION OF PROGRESS IN E- GOVERNMENT PROCUREMENT**

**April 2005**

*This document was prepared for the Inter-American Development Bank by Jorge Enrique Vargas, International Governance Solutions, [vargas@intgov.com](mailto:vargas@intgov.com).*

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## I. EXECUTIVE SUMMARY (PRINCIPAL CONCLUSIONS AND RECOMMENDATIONS)

This report contains the results of an analysis of Costa Rica's level of preparation for e-GP development. The results are based on two complementary processes: a self-evaluation conducted by high-level and executive authorities at the public and private institutions most involved in e-GP's progress and an analysis performed by specialists at the World Bank and IDB with the support of specialized consultants. The report contains a presentation regarding e-GP, the objectives and methodology of the study and details regarding the findings, conclusions and recommendations.

This section is a summary of the evaluation's principal findings, which will be examined in greater detail in Section 4.

### *1.1 THE LEVEL OF PREPARATION OBSERVED FOR E- GOVERNMENT PROCUREMENT*

The progress in each component is synthesized in Table No. 1.

**TABLE No. 1**

#### **LEVELS OF PREPARATION FOR E LEVEL PROCUREMENT**

<b>No.</b>	<b>Component</b>	<b>Level of Preparation</b>
1	Government Leadership	2
2	Policies	1+
3	Strategic and Operational Planning	1
4	Legislation and Regulation	2
5	Human Resource Development	2
6	Integration of the Private Sector	1+
7	Standards	1+
8	Infrastructure and Internet Services	2
9	Systems in Operation	2+

Source: Joint Self-evaluation conducted in March 2005.

The **levels of preparation** are indicated on a scale from 1 to 4 which are further explained in Annex No. 1.

## ***1.2 PRINCIPAL FINDINGS AND CONCLUSIONS***

The Government of Costa Rica is currently in the initial stage of adopting an e-GP program. The progress made thus far has been significant and is geared towards incorporating international best practices. The second version of COMPRARED is already ready and is more extensive and functional than its predecessor, allowing for electronic publishing of opportunities and awards in a format that is both simple and accessible. Efforts have also been initiated to transform the rules, functions and services relative to procurement.

The tool created by the Multilateral Development Banks to evaluate the degree of preparation to apply e-GP looked at the following:

1. **Leadership.** The Ministry of Finance had an important leadership role in the development and operation of COMPRARED. However, it has yet to consolidate its overall leadership role in e-GP. This is due to the fact that several entities have begun their own initiatives without guidance from the Ministry of Finance. These processes run parallel to, as opposed to being integrated with, efforts to develop COMPRARED. There are several e-GP initiatives in progress. This fragmented approach limits COMPRARED's scope and reduces the efficiency of any solution or set of solutions. The Controller General's Office also plays a significant role in strategy development for e-GP, and is currently conducting information cross-referencing on procurement prices and conditions in the public sector.
2. **Policies.** An effort has been initiated to define a single general policy for e-GP development that is capable of integrating executive management functions and control functions. This process is in the incipient phase. The objectives foreseen focus on transparency and fiscal savings but are weak in terms of efficiency, effectiveness and the impact of government procurement on development. The lack of objectives for effectiveness and development could affect the integral function and impact of any e-GP implemented. Impact goals and follow-up mechanisms are needed to monitor procurement policy results.
3. **Planning.** No common vision exists on which e-GP system is best for Costa Rica and how said system should be developed and implemented. Although some significant progress has been made and COMPRARED's development has been compatible with the guide map proposed by the multilateral development banks but an integral strategic plan is still needed. Without this tool, progress will lack articulation and some key aspects will not receive the necessary consideration (for example, the coordinated development standards or the habilitation of the private sector for e-GP). The lack of a plan explains the inexistence of quantitative goals, timelines and responsibilities for the different components demanded by e-GP.

Inverse auctions have been agreed upon for the short term. Prior to adopting electronic reverse auctions as a state procurement modality, in-depth studies must be conducted to determine the characteristics of both the market and the suppliers depending on the goods chosen.

4. **Legislation and regulation.** Public contracting is governed by the Law for Administrative Contracting (7494). This law was not conceived in a context that directly contemplated electronic means, but allows for their utilization and does not pose significant obstacles for e-GP development. Regardless, some aspects require a modern interpretation of the Law's dispositions. Central Government bodies are obligated to use COMPRARED according to the Regulation of the Law of Financial Administration of the Republic and Public Budgets (8131).
5. **Human Resources.** Costa Rica –like the majority of Latin American countries– has few high level human resources working in e-GP. Nevertheless, COMPRARED has received adequate guidance and technical support. Few individuals in public entities are specialized and hold professional titles in modern procurement. Executives conduct training activities on procurement and contracting for employees at the Central Level and are able to answer supplier questions. The Controller General's Office also conducts training and dissemination activities. There are currently no human resource development programs that focus specifically on modern public contracting, with the exception of some efforts at autonomous entities. More in-depth knowledge on international experience in e-GP and an improved exchange of information with countries that are more advanced in this area are required.
6. **Integration of the private sector and development of competition.** The evaluation showed that the private sector's integration is barely incipient and still weak. Fees and guarantees are required in the supplier selection process, and have become entry barriers and restrictions to free competition.
7. **Standards.** COMPRARED has made a step in the right direction by adopting a NSPSC as a basic coding system for both goods and services. This decision is compatible with international practices. In other aspects, this standard component has yet to be significantly developed. No policy framework for standards currently exists. Working mechanisms are still needed to consolidate joint efforts among the government, private sector and specialized bodies in order to further development in this area. A free on-line supplier registry exists and is useful in efforts to inform suppliers on business opportunities; however, this does not constitute a standard given that it operates in parallel with registries at various sectorial entities that are not interconnected.

The Government of Costa Rica has foreseen the introduction of digital signatures and certifications to further the progress of e-GP development. International experience has shown that this decision should be taken after special studies have been

undertaken. This type of analysis has yet to be conducted in Costa Rica, which represents a significant risk to free competition and e-GP development.

8. **Infrastructure and Internet Services.** The telecommunications infrastructure in Costa Rica could be qualified as intermediate by international standards. The rhythms of expansion, nevertheless, are lower than those of many Latin American countries due to a delay in the implementation of wide band for internet and the slow growth visible in cellular telephone services (due to restrictions on supply). The internet connectivity of public procurement agencies and suppliers is medium in large cities and tends to be low in less developed areas. In all cases, the internet connection is slow. In this context, minimum connectivity conditions are sufficient to initiate the e-GP process, but require combining internet with voice telephone and fax. It is foreseeable that if the future development of e-GP is well directed, it will stimulate rapid improvement in connectivity.
9. **Systems in operation.** The COMPRARED website has the best conditions for conversion to a single portal: it publishes procurement plans, selection processes according to different modalities and the awards given. For some time now, it has been possible to obtain free base documents, which represents a laudable step forward. COMPRARED publishes the majority of information garnered from central level public entities but has yet to include some large national entities (autonomous bodies), municipalities and the legislative, judicial and electoral branches. The inclusion of said entities will increase rather than diminish autonomy, and should produce highly positive impacts on governability, efficiency and development.

The new version of COMPRARED seems to be compatible with the requirements for the use of e-GP in loan, credit and donation procedures before the Multilateral Development Banks. It would be recommendable to conduct an in-depth evaluation on this compatibility.

COMPRARED operates in a Web-Web environment and requires no specialized hardware or software. Plans include connecting COMPRARED with SIGAF so that both systems can exchange information.

To date, no mechanism has been defined for COMPRARED's future financing and the general operation of the e-GP system in Costa Rica.

### ***1.3 PRINCIPAL RISKS***

Costa Rica has made positive step towards e-GP development, but its successful and massive adoption is still not guaranteed. Several key risks exist that must be taken into account to guarantee the success anticipated, including:

- The principal risk more than likely lies in the *fragmentation of initiatives*. In the e-GP ambit, it is preferable to provide a single solution, although not necessarily technically optimum, to concentration on two or more solutions, which although technically solid, operate in parallel. When parallel e-GP systems are adopted, objectives and benefits are limited to the point that the government, suppliers and national development are negatively impacted.
- The primary consequence of this fragmentation is that by not including *autonomous bodies* (and particularly ICE and CCSS), COMPRARED only covers one fourth of government procurement.
- The informative phase of tendering does not require in-depth planning. However, the subsequent steps in e-GP development imply high levels of risk and complexity. As such, a *rigorous and consentuated strategic plan* is needed to direct simultaneous progress on the different aspects required. The lack of a *strategic plan* of this nature may mean that some highly important issues have not been given the appropriate consideration.
- By adopting *inverse options* in a short term, it may be possible to cover 15% of total government procurement. This alternative could negatively impact the private sector, sectorial development and prices in the long-term it is not based on in-depth knowledge -still not available- of the market and the economic behavior of suppliers.

There is currently no *multi-dimensional strategy for human resources development* (continuous training for directors and operators of government procurement and suppliers with different profiles, professional training at different levels, massive dissemination throughout the community, focalized dissemination for decision makers, etc.). Progress in this process will depend on the management of human resources and the legitimacy achieved in the community.

- Standard development is still weak and this debility affects the future progress of e-GP. The phases subsequent to the informative stage will only be viable and efficient if processes standards exist (documentation and steps), along with market standards (single registry of the suppliers and the extensive use of international coding) and system standards (security, portability and interoperability).
- The supplier selection processes have become slow, costly and inefficient due to unnecessary requirements and discriminatory practices of filtering entries. These limitations cause considerable inertia and impede the adoption of more transparent and efficient processes.
- The use of *digital signatures and certification* –which at first sight seems to be the optimum option and an evident necessity– have not been successfully applied in e-GP systems throughout the world; as such, it is necessary to determine potential risks in order to avoid errors and unnecessary costs that other countries have experienced in their e-GP efforts.

- It would be discriminatory to adopt an e-GP model based *exclusively on Internet*. It is necessary to include strategies for voice telephone, fax and text messaging use.
- COMPRARED is designed to be a single system for procurement but runs the risks of becoming a parallel system due to the fact that *many entities maintain their own portals and specific registry and payment requirements for participating in supplier selections*.

#### **1.4 PRINCIPAL RECOMMENDATIONS**

In order to face the risks we recommend the following tasks, some of which must be implemented in the initial stages:

- Consolidate a *single leadership* to coordinate the different initiatives in progress.
- Develop a *strategic e-GP plan*, that takes into consideration the necessities of the Central Government, autonomous bodies, municipalities and control systems.
- *To consolidate the institutional environment* for the overall development of government procurement and e-GP. Coordinate procurement and control functions into a single system that can meet all needs for information exchange.
- Progress in the *standardization and simplification* of tendering documents and processes.
- Prior to adopting *inverse auctions*, conduct market studies to evaluate overall viability and to determine the specific sectors where the modality can be applied.
- Research the implications of *digital signatures and certificates* with regard to costs, the soundness of the security system, competition development and compatibility with international agreements such as the FTA (Free Trade Agreement), regional agreements and agreements regarding procedures made with the Multi Lateral Development Banks.
- To consolidate *COMPRARED as a single portal* by eliminating the information on contracting found on entity portals or by transforming said information into an electronic copy within COMPRARED (which will constitute the original copy in all cases).

## **2. INTRODUCTION TO GOVERNMENT PROCUREMENT WITH ELECTRONIC SUPPORT (E-GP)**

## 2.1. GLOSSARY

**Government Procurement:** Process to plan, select suppliers, contract and manage the execution of goods, services or works conducted with the public budget.

**Quotes or online purchases (“Purchasing”):** Procurement on low cost goods and services that are generally purchased in large quantities. The process is based on competitive proposals from which procurement entities can choose.

**e-GP:** Universal acronym for electronic government procurement, meaning government procurement with electronic support.

**Procurement Environment.** It refers to the predominant focus in the country regarding procurement processes. Generally it refers to an integrated but manual system that has technological support in some areas.

**Tendering (“Tendering”):** Procurement of high value and low frequency goods, services and works according to conditions and requirements set forth by procurement entities. Suppliers draw up proposals that are subjected to a competitive process. This process includes common use contracts and inverse tendering.

## 2.2. BASIC CHARACTERISTIC OF E-GP

Many countries around the world have developed –with greater or lesser success– e-GP processes that respond to different visions and models. The Multi Lateral Development Bank has drawn on these experiences to identify the key elements of a successful process. Next, we will look at these characteristics.

### 2.2.1 Concept

**Government Procurement with Electronic Support –e-GP–** refers to the processes used by the government to select suppliers and manage contracts. These processes are based on the use of information technologies (particularly Internet). E-GP includes common standards, the simplification of procedures, inter connected data bases and direct access to information for procurement entities, suppliers and the community, allowing for greater transparency, efficiency and competition in procurement.

### 2.2.2. Objectives of E-GP

E-GP can be directed to achieve the following basic objectives:

**Governability (transparency and equity).** With the aid of electronic procedures, all procurement procedures, (plans, calls to participate, awards, contract execution) are visible to everyone at the same time, permitting equitable access for suppliers and maximum transparency. Based upon this, it is possible to construct indicators and make comparisons to guarantee accountability and stimulate efficiency. It is also possible to

develop competition because trust is generated and new supplier participation is stimulated.

**Efficiency and effectiveness.** E-GP simplifies, standardizes and integrates processes. This helps to reduce administrative costs for the government and suppliers and decreases the duration of procurement processes. At the same time, e-GP stimulates competition and facilitates the integration of procurement; it can also significantly reduce the prices of goods and services. Subsequently, public investment becomes more efficient and it is possible to reduce the tax payer burden.

- **Balanced Development.** E-GP enables government procurement to stimulate competitiveness and productivity, increasing asset protection against monopolies, facilitating the development of small and medium business (due to a reduction in private sector market entry restrictions), and stimulating the local and regional economy (by taking advantage of size and location). Additionally, it facilitates international integration for less developed countries.

If the objectives mentioned above are mutually compatible, the isolated search for one or the other fails to automatically lead to the achievement of the three. For example, an increase in transparency and accountability can be achieved by being less efficient by increasing the number of steps and costs; greater efficiency based on large volume contracts can eliminate competition, destroy small and medium business and reduce development dynamics.

In general, developing countries focus more on governability (transparency), while more developed countries value efficiency and effectiveness. Some nations –particularly developed countries- are interested in the third objective of balanced economic development.

### **2.2.3. The e-GP Portal**

E-GP normally operates with a support of a single Internet Portal that is utilized by the entire government structure and which permits on-line registry of suppliers and government procurement bodies, public access to the norms, policies and contracting guides, on-line information on upcoming and current procurement processes, selection processes, purchases, payment and information on contracts (winners, costs, duration, execution). The Procurement Portal is accessible to suppliers, government buyers, and the community and provides information on procurement and allows users to conduct on-line procurement procedures.

## 2.2.4. Areas of E-GP

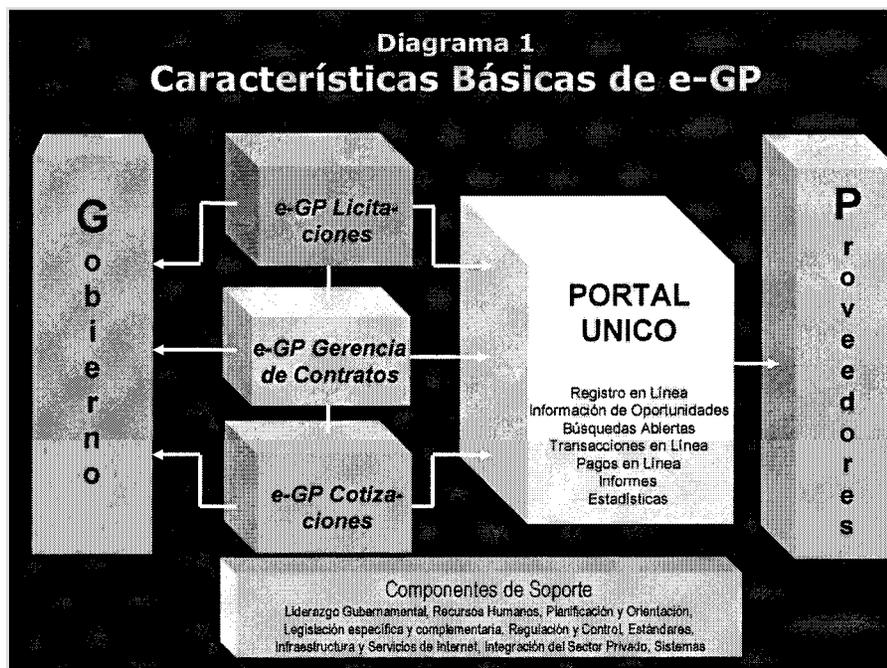
E-GP and the Single Portal generally cover three basic areas of procurement and public contracting:

- **E-tendering:** individual or high volume procurement of high value goods services and works. The selection process begins when a public entity issues a set of base documents for tendering that contain information on the process. Suppliers then present adequate proposals according to the specific parameters established in said document.

**E-quotes or on-line transactions:** this refers to standardized goods, services and works that have a low unit value and which are procured in large quantities. The procurement process begins with an on-line announcement for quotes and is conducted in an open market for supplier tenders. Based on previously established criteria, public entities use on-line procedures to select the best quotation, order delivery, and pay through on-line transactions.

- **E-Management of contracts:** execution with electronic support and processes for tender reception, payments, contract liquidation, management of guarantees, audit control, evaluation and consolidation of information for the public dominion and for future procurement decisions.

Diagram No. 1 contains a schematic representation of a mature e-GP Procurement System.



In order to achieve its objectives, e-GP is normally connected with other state management systems to identify persons, register business, manage the budget and conduct oversight.

E-GP has data bases with information on market behavior and patterns in public procurement. This information is used by the governments in specialized analysis. Suppliers can use this information to improve their decision making processes.

### **2.2.5 Basic Components**

E-GP processes operate with the support of the data base components. The components represent the set of conditions for governability, management and technological support required in any successful and sustainable approach to e-GP. These include:

- Efficient government leadership.
- Specialized human resources.
- Strategic and operational planning.
- Specific and complementary legislation.
- Orientation, manual, regulation and control.
- Infrastructure for communications and Internet services.
- Standards.
- Integration of the private sector.
- Procurement systems and operation.

## **3. CHARACTERISTICS OF THE E-GP EVALUATION IN COSTA RICA**

### ***3.1 OBJECTIVES OF THE EVALUATION***

- To support, government and non-government bodies and private entities in the country to collectively build a common vision on the level of preparation for e-GP development, based on the general procurement environment and the state of other processes that converge with e-GP.
- To facilitate a review of the progress of e-GP processes that is already underway.
- To facilitate the development of an integral government vision on the country's progress in e-GP and provide a useful instrument to set progress goals.
- To provide an objective base to conduct international comparisons on e-GP progress in other countries, in order to facilitate cooperation and process integration.
- To show the Inter American Bank and the World Bank where to concentrate their support and financing for e-GP development.

### **3.2 SUMMARIES OF THE METHODOLOGY**

The evaluation in this document is the result of two complementary evaluation processes:

1. **Directed Self-evaluation.** Executives and high level employees at the public and private entities most involved in e-GP development jointly analyzed e-GP's nine components and the sub components of each by utilizing a self-evaluation format to determine the level of preparation for e-GP. The format was prepared by the Group for the Harmonization of Procurement with Electronic Means, whose members are the Inter American Bank, The Asian Bank and the World Bank.

Following this exchange of experiences and knowledge, the participants expressed their vision on the level of preparation or progress in Costa Rica with regards to e-GP. Their analysis served as the basis of this evaluation.

Annex No. 1 - contains a detailed description of the self-evaluation methodology.

**Expert analysis.** Experts from the World Bank and the Inter American Development Bank, with the support of specialized consultants, conducted an analysis of the results of the self-evaluation to identify critical aspects in the framework of the Country Procurement Assessment Review –CPAR– and complemented the main conclusions with interviews of the most relevant actors.

### **3.3 ENTITIES CONSULTED**

Thirty seven executives and high level officials from the following private and public entities participated in the joint evaluation:

1. Ministry of Foreign Trade
2. Ministry of Public Education
3. Ministry of Finance
4. Ministry of Public Works and Transport
5. Office of the Controller General of the Republic
6. Social Security Office of Costa Rica
7. Costa Rican Institute of Aqueducts and Sewage
8. Costa Rican Institute of Electricity
9. Municipality of San Jose
10. Radiographic Association of Costa Rica S.A.
11. Costa Rican Chamber of Information Technologies and Communications
12. Chamber Industries

## **4. A DETAILED ANALYSIS OF THE EVALUATIONS' FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

This section analyzes the components that have the greatest influence on government procurement. For each, the following is presented:

- a brief description of the desirable characteristics of e-GP in countries with a mature system;
- a synthesis of the principal findings relative to the current situation;
- the risks of embarking on e-GP without resolving certain critical restrictions;
- the main conclusions derived from the findings and the identification of risks;
- The most important recommendations.

### **4.1. GOVERNMENT LEADERSHIP**

#### **4.1.1. Desirable characteristics according to international experience**

In countries that have successfully adopted e-GP, the government has generally had a leading role in the planning, financing, administration and backing of the system's implementation in order to create an environment in which procurement modernization and e-GP change is consolidated in an integral and sustainable manner.

Government leadership can be seen in:

- the degree to which a shared vision and national objectives regarding procurement have been articulated,
- the existence of an integral strategic plan for implementation of procurement reform,
- the development of a professional career in procurement, and
- the guidance government agencies provide regarding procurement issues.

#### **4.1.2. Findings**

COMPRARED is an informative portal on public contracting that is being developed according to international practices. This system has the capacity to become the cornerstone of e-GP development in Costa Rica.

The Ministry of Finance (Head Office for Goods and Administrative Contracting) plays an important leadership role in driving e-GP development in the Executive Branch, particularly with regards to COMPRARED.

The Ministry of Finance's leadership role with regard to COMPRARED has not been consolidated as a basic guide for e-GP development in Costa Rica given that various entities have begun their own e-GP processes without guidance from the Ministry of

Finance. These systems currently are not integrated with and instead run parallel to COMPRARED.

The benefits of e-GP will be maximized if it becomes a single source of information relative to all government procurement. This system must be capable of providing on-line coverage for the entire universe of procurement procedures. The objective is to achieve greater transparency, stimulate competition, and better direct procurement policies while strengthening control. Other goals include gaining efficiency and effectiveness. If the option to choose is opting for multiple systems rather than concentrating information and procedures within a single portal, the resulting fragmentation will negatively affect costs, reduce impact and compromise e-GP development.

A consentuated vision has yet to be defined regarding the government procurement system that the country wishes to develop and the e-GP model that should be chosen for application throughout the public sector. This lack of a common vision has contributed to the absence of a common strategy and single leadership.

Efforts to consentuated decisions with key stakeholders to modernize procurement and develop e-GP are still incipient. The initiatives undertaken thus far have failed to include all key players in e-GP development: autonomous entities, various public entities from the distinct branches of state, municipalities and supplier organizations.

#### **4.1.3. Risks**

The fragmentation of initiatives represents the main risk in efforts to modernize administrative contracting and develop e-GP in Costa Rica. In the ambit of e-GP, a sole solution is preferable, although not necessarily technically optimum, to utilizing two or more solutions that are technically solid but which are developed in parallel. The dispersion between alternative systems of e-GP adopted by various authorities significantly limits the achievement of objectives and benefits, producing negative impact on the government, suppliers and national development.

A consequence of fragmentation is that by not including autonomous bodies (and particularly the ICE and CCSS), COMPRARED only covers one fourth of government procurement.

Some entities believe that e-GP is simply a matter of incorporating computer technology within traditional processes rather than an integral strategy to improve the entire procurement system. As such, risks exist that e-GP will be utilized as a technological tool rather than as a process for structural change. Special studies are needed to provide insight on these matters. If this introspection is lacking, any efforts made may become obstacles to the development of free competition and e-GP.

The lack of consensus agreement amongst certain key actors in procurement such as the Controller General of the Republic, the Legislative Branch, the Judicial Branch and the

municipalities is a threat to the celerity, integrality and sustainability of the e-GP implementation process.

#### **4.1.4. Conclusions and Recommendations**

Costa Rica has made important progress in defining a leader entity in the executive branch to develop procurement in e-GP. However, the Ministry of Finance should consolidate this leadership through a widely consentuated process. Sole leadership and consensus processes will facilitate the coordination of initiatives that are currently underway and will be useful in the search for appropriate solutions to the needs of all public entities and branches.

This leadership can ground its efforts on the basic “picture” of the e-GP system as envisioned by the principal actors in the process. This basic reading can become a common vision that will be adopted by political entities, public procurement entities, the private sector and the community in general.

## **4.2. POLICIES**

### **4.2.1. Desirable characteristics according to international experience**

The policies (the ways that the government proposes to achieve specific impacts) provide direction and meaning to efforts to transform procurement. Policies include objectives, define basic criteria (such as cost-benefit analysis) and create a favorable environment for open and effective competition, risk management, support for small and medium business, regional economic development, common use contracts or integrity and ethics.

These policies should also be applied to procurement system development and its interfaces with other corporate systems.

Policies must be clear on the results expected and flexible enough (with regard to procedures) to adapt to different procurement levels and types. This approach seems to be more successful than adopting a set of rigid regulations that stifles project executors in the decision making process.

The policies must be understood by all “affected” parties and can be monitored independently to determine compliance. Changing policies to coincide with change tends to be a simpler process than changing legislation.

### **4.2.2 Findings**

**General Policy.** Efforts have begun to define an overall, single policy for e-GP that is capable of integrating executive management functions and control functions. This

process is in the embryonic stage given that it still lacks a common vision and requires development through consensus mechanisms.

**The objectives of government procurement.** In the ambit of procurement, Costa Rica gives special emphasis to objectives for transparency, the eradication of corruption and fiscal savings. These objectives are indispensable and, given the current situation of the country, are very useful in efforts to achieve the support needed to modernize the system. Nevertheless, modernization in procurement and contracting requires objectives that focus on the following: efficiency, (celerity and opportunity), stimulation of private sector competition, efforts to drive development of small and medium companies in the country, and the promotion of regional development.

**Impact goals.** Goals to verify and control the impact of progress have yet to be defined. These goals should focus on: progress relative to transparency, price decreases, savings due to the elimination of administrative costs, as well as the development of competitiveness and productivity, etc. Successful efforts to follow up on progress require a clear definition of goals and the existence of a base line.

#### 4.2.3 Risks

Interest in transparency is positive and has helped concentrate initial emphasis on consolidating e-GP in the COMPRARED portal. Nevertheless, this interest has impeded efforts to develop awareness on the dynamizing potential of government procurement as an instrument to stimulate competition, competitiveness and productivity as well as promote balanced business and regional development. It is important to keep in mind that these objectives are also important in efforts to achieve a high impact system with maximum legitimacy. The emphasis on transparency to the exclusion of other objectives can lead to a government procurement system that privileges a few large businesses to the detriment of others. This tendency has been noted in countries in which inverse auctions are common and exclusive contracts in closed “market places” are frequent.

The lack of impact goals leads to an excessive concern with procedures as opposed to focusing on results such as efficiency, the effects of development and the potential capacity that procurement has to drive economic growth and balanced development.

#### 4.2.4 Conclusions and Recommendations

Procurement modernization has begun. There is a bias in the objectives that places more emphasis on transparency than on efficiency and the impacts on business and regional development. More impact goals are necessary and follow-up mechanisms must be developed to monitor procurement policy results. As such, it is recommendable to:

- Incorporate objectives for efficiency and industrial development, regional development and the development of small and medium business. These objectives must be accompanied by procedures that facilitate the achievement of these goals.

- To define –in quantitative terms– the impact goals for government procurement and the e-GP system and create an independent mechanism for supervision and the periodic dissemination of the results obtained.

### **4.3 STRATEGIC AND OPERATIONAL PLANNING**

#### **4.3.1 Desirable characteristics according to international experience**

Good planning and orientation are essential to any e-GP strategy. The role to plan and guide electronically based services is complex and challenging<sup>45</sup>.

Experience has shown that **strategic planning** should be based on a clear *evaluation* of the current context for procurement. Based on this information, the Administration defines the direction, scope and focus as well as the stages required to meet its plans. The *Strategic Implementation Plan* includes an e-GP strategy that is articulated with other plans for e-Government and e-Commerce. These plans must be developed through *consensus* and with the participation and support of the most relevant “affected” parties with regard to government procurement. In the public sector, said parties fulfill roles in finance, planning, auditing and control, legislative development, regulation, procurement management, education and training as well as public sector administration. With regard to the private sector, affected parties include: industry, professional associations, supplier groups and oversight bodies.

**Operational planning and direction** for government procurement should support agencies in their efforts to execute procurement responsibilities. Clear *guides and procedures* that can be translated into actions and consistent *results* are necessary. Procurement guides and processes should be well documented to help users better understand and evaluate their knowledge of relevant procurement topics. Contract results are controlled and communicated and action is taken when necessary. The data consolidated on procurement must be available to support market understanding and should be used as a basis for future decisions on government procurement.

*Public information must be available* on the procurement process and its results. The process should include *sufficient administrative controls* to ensure effective compliance with policies and guidelines. Risks management should also be determined, and probity, performance auditing and quality based management must be dealt with in order to *conduct corrective actions* when necessary. Independent external auditing can take place in any agency engaged in government procurement.

*Procurement staff* should have access to competent advice on procurement matters. Procurement responsibilities are generally delegated to government agencies along with a

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<sup>45</sup> See “e-GP - Guía para Planificar su Implementación”, available at [www.mdb-egp.org](http://www.mdb-egp.org).

mechanism (i.e. accreditation) intended to help such agencies meet compliance with performance standards required.

#### **4.3.2. Findings**

The first steps towards procurement modernization and e-GP development in Costa Rica have been favorable. But the process has entered higher risk stages whose complexity requires strategic and operational planning. In this aspect, the current level of preparation in Costa Rica is following:

**Analysis of the procurement situation.** Evaluations are available on legal and administrative aspects of procurement and on some price behavior. Direct quantitative information is still lacking which makes it difficult to conduct an in-depth evaluation of the prices the State pays in each sector and determine the costs of procurement processes to suppliers and procurement agencies. Information is also needed to effectively evaluate payment time lines, differences in contracting behavior between agencies, and market behavior. The Controller General of the Republic has begun an effort to develop a system to cross reference information on prices and conditions.

**Strategic procurement plan and e-GP.** There is no strategic plan that – through the situation analysis mentioned above– establishes the characteristics of the general procurement system and electronic system desired, the impact objectives, quantifiable goals, intermediate results, the guide map to achieve the same, time lines and responsibilities.

**Unified procedures.** There are different interpretations of norms and dispersion in the practices and methods used for procurement or contracting at public entities. There are substantial differences in the ways that different entities contract for the same good or services.

**Contract Management.** There is currently no system capable of managing contracts (delivery, quality, payment, results). Each entity does an autonomous and specific follow-up on contract execution relative to goods or service provision. There are no basic guidelines on minimum responsibilities, delivery conditions, guarantees, etc. There is currently no on-line center to follow up on contracting practices.

**Overall monitoring of procurement.** Mechanisms have been implemented to obtain consolidated results on procurement patterns and performance. COMPRARED provides information on procurement performance to support decision making processes.

**Reverse Auction.** Costa Rica plans to implement, in the short term, inverse auctions similar to those used in other Latin American countries. These auctions are capable of covering 15% of the government's total procurement. No market studies are currently available to support the decision to implement this option.

### 4.3.3 Risks

The lack of strategic plans is one of the principal risks for procurement modernization and e-GP development. This produces three undesirable consequences: i) the lack of a guiding instrument that facilitates the articulation of unlike processes -with divergent responsibilities and time frames- into a common and articulated development effort; ii) in turn, progress is uneven for the different components and sub-components of the e-GP development process, leading to difficulties relative to coordination, inefficiency and high costs; and iii) the fundamental topics such as strengthening of supply and demand, the development of standards or the creation of sustainable conditions for the system are delayed due to urgent although less transcendental matters.

The lack of quantitative information on procurement behavior impedes the development of a base line and a monitoring system capable of demonstrating the benefits of procurement modernization and e-GP implementation. This monitoring is essential to measure the benefits to be derived out of them, calculate the savings that can largely justify the transfer of resources to the public procurement system and reinforce its legitimacy in the eyes of the community.

The heterogeneity of procurement and contracting process in public entities is one of the worst enemies of e-GP development, which is, par excellence, a set of standardized and common processes. All progress related to the unification of legal interpretations and the homogenization of procedures is essential to e-GP development.

The use of inverse auctions in state procurement has had predatory effects on competition in various countries due to the fact that these procedures provide fertile grounds for collusion. For this reason, many countries have decided that inverse auctions are undesirable and have instead concentrated on strengthening common use contracts.

The lack on follow-up on procurement limits market knowledge, which is essential to designing good procurement policies.

### 4.3.4. Conclusions and Recommendations

The lack of an integral and consentuated strategic plan impedes e-GP development in Costa Rica. The lack of quantitative information and the procurement situation is troubling given that the system needs a baseline and a monitoring system that indicate the impact of implemented processes on savings, efficiency and effectiveness. The dispersion of contracting practices in public entities neutralizes much of e-GP's potential. Next, we will look at ways to strengthen strategic and operational planning.

- Establish a base line with quantitative indicators on procurement behavior and create a monitoring system of said indicators that provides information on impact in terms of cost, prices, time frames and quality; to propose goals for results based on the real situation and plan subsequent actions.

- To begin elaborating a strategic plan based on the situation analysis mentioned above and define, in detail, the characteristics of the e-GP system desired, the objectives and quantifiable goals, intermediate achievements, the guide map to achieve the same, time frames and responsibilities. This is an essential mechanism to ensure that all of the actors in e-GP and the community be aware of the direction efforts are taking in order to secure ample support and cooperation from all concerned.
- To begin standardization of procurement process in the public sector prior to incorporating electronic means.
- In-depth studies on market characteristics and goods suppliers that have been selected for reverse auctions. This information should be used as input to analyze reverse auction before any decision towards its adoption is made.

#### **4.4. LEGISLATION AND REGULATION**

##### **4.4.1 Desirable characteristics according the international experience**

In countries where e-GP is better developed, legislation tends to be open to change and the respective regulatory entities are generally independent and possess the capacity to exercise their functions.

**Legislation.** The e-GP strategy is governed by a set of direct and indirect norms. The legal framework must allow for change without the need to change laws; legislation that permits the government to try out and change policies is more advantageous to e-GP development. Specific legislation is needed that deals with new topics such as electronic commerce, authentication of signatures, privacy and data security.

**Regulation.** Regulation is the key factor in defining the integrity, equanimity and effectiveness of government procurement. Regulation is much more than “rules”. In fact, it includes basic procedural norms, good practice management, accreditation, management by results and internal and external auditing of both norms compliance and results.

There are independent regulatory bodies that have the authority to define and monitor regulations, establish policies and procedural guides, act as referees in procurement disputes, manage accountability of the agencies responsible for public procurement, and conduct studies on procurement issues. Independent regulatory agencies have frequently the ability also to conduct audits on government agencies and secure that good practices in procurement are adopted.

##### **4.4.2. Findings**

**Direct Legislation on Procurement.** Public contracting is directed by the Law for Administrative Contracting (7494). In general, this law provides a reasonable

framework with which to initiate procurement modernization and e-GP development, despite the fact that some dispositions, although applicable at the time they were written, no longer apply due to progress in technology. A modern interpretation of this law will help overcome these restrictions.

**Direct Legislation on e-GP.** The regulations of the law for Financial Administration of the Republic and Public Budgets (8131) stipulate that all systems established by the Administration, including COMPRARED, must be used by all Central Government bodies. This legislation can be used as the base to elaborate regulations that favor standardization and simplification processes and reduce some superfluous procurement requirements through the use of electronic support.

**Related Legislation.** The general legislation of the country has just begun to adapt to e-Government processes in general and to e-GP in particular. Incipient legislation exists on procurement topics (i.e. privacy security, online payments, interoperability of data bases, etc.).

**International Harmonization .** To date, no efforts have been made to coordinate procurement laws and practices with trade treaties and other international agreements. Surely this will be a priority in the framework for the free trade agreement that the country is taking part in.

**Regulating Agencies.** The functions of the regulatory agencies of the Executive Branch corresponds to the Ministry of Finance, which has the competence to regulate, guide, train, accompany and oversee contracting processes.

**Control and auditing.** The Controller General of the Republic controls and supervises government procurement agencies. This control is essentially numerical and legal, is ex-post, and is accompanied by competences to sanction public agents.

#### 4.4.3. Risks

The law proposes some restrictions for e-GP, but in general, makes it viable. Experience in Latin America shows that, when attempting to initiate e-GP, efforts to advance the system by adopting a more modern interpretation of the current legal framework tend to be more successful than attempting to pass new legislation. There are two reasons why this is so. First, when countries lack a common vision of the public procurement system and e-GP, it is typical to find significant heterogeneity of visions in the legislative branch that can lead to an excessively complex and sometimes contradictory system. Second, there is a tendency for laws related to procurement and contracting to include procedures and details. This option, which is often undertaken to drive modernizing changes, carries with it the risk that legislation will become obsolete due to the growing speed of technological change and the unpredictability associated with the same. This will soon become a restriction to any modernization efforts.

#### **4.4.4. Conclusions y Recommendations**

The Administrative Contracting Law has some limitations in terms of e-GP but, in general, allows for significant progress. In consequence, the following main recommendations should be taken into consideration:

- To maintain and deepen the effort that the Ministry of Finance has made to make progress in the current legislative framework and propitiate modern interpretation.
- To include, an in-depth analysis of the changes required in legislation related to e-GP development in the strategic plan.
- To strengthen the capture and use of information generated by procurement processes to use the same as the basis of monitoring and control activities.

#### **4.5 DEVELOPMENT OF HUMAN RESOURCES**

##### **4.5.1 Desirable characteristics according to international experience**

Countries that have successfully adopted e-GP have made human resource development major priority. On the contrary, the lack of a human resource development strategy has always been a determining factor in failure.

Best practices in human resources development show that:

1. There has been a massive dissemination of the characteristics of the change process; this effort is maintained until the public is aware and has lent support.
2. Procurement management has been professionalized to a stage of permanent training and accreditation of:
  - procurement manager,
  - personnel with procurement responsibility.
3. There has also been a noteworthy effort to provide education and training to all involved parties, including:
  - Political leaders,
  - executives and high level officials in the public sector,
  - suppliers at all levels,
  - business associations in the private sector and workers,
  - oversight bodies,
  - the media.

4. The leader government agency has public officials and consultants who have expertise and knowledge on policy, legislation, technology and management.

In this ambit, the strategies adopted differ as the programs for education and training can be provided by government agencies, private sector organizations, third parties or by a combination of actors.

#### 4.5.2 Findings

**Massive Dissemination.** COMPRARED has been the object of massive dissemination campaigns. Nevertheless, the common citizens are unaware that the focus on government procurement has changed and as such legitimacy is lacking. Efforts must be made to maintain and reinforce the dissemination strategy.

**Professionalization of Government Procurement.** The Personnel of procurement units and procurement office of public entities have low levels of professionalization. Procurement departments do not always have specialized personnel and are often not managed by specialists. No certification mechanism currently exists for dependencies that conduct procurement.

**Training of Buyers and Sellers.** The Ministry of Finance and the Controller General's Office have training programs on procurement in general and on the use of the COMPRARED portal. Those that have received this training consider it useful and functional. Coverage is still partial and is generally concentrated in the capital and in central government entities.

**Human Resources in the Leader Entity.** COMPRARED has highly qualified team in many areas. However, it is incapable of managing all the challenges that system implementation implies. Costa Rica does not have a physical map of actors in procurement modernization and e-GP. COMPRARED has analyzed the e-GP system of many countries but permanent contact to exchange information on international experience has been sporadic.

#### 4.5.3. Risks

E-GP's progress depends to a large extent on the changes that it propitiates in the motivation and action levels of public officials responsible for procurement, their superiors and suppliers. The weakness of this component threatens the legitimacy and depth of other changes underway.

To be efficient, training in the use of COMPRARED should be accompanied by general training programs for public officials on procurement procedures that, as was mentioned above, unify legal interpretations and practices. To the contrary, COMPRARED will be seen as a simple formal requirement that does not change traditional practices.

The lack of professionalization of dependencies and procurement officials creates high levels of resistance to change.

Training that is exclusively on-site tends to become diluted due to a lack of continuity in timely reinforcement. The Internet should be used to provide reinforcement and help reduce risks.

A lack of training that is specifically designed for key groups (political leaders, high level officials, leaders of professional organizations, etc.) diminishes support for and legitimacy of the e-GP process.

The lack of a mass of experts in e-GP and contact with the best practices world wide could lead to a slower start up that is prone to errors that have already been overcome in other areas. The current state of e-GP in the world makes it difficult to depend solely on replicating the model of either one country or that of a small group of countries from one region.

#### **4.5.4. Conclusions and Recommendations**

The human resource development component is in the incipient stage, but there are no significant obstacles to strengthening and widening its impact.

E-GP development process that is conceived of as an institutional process for change and transformation of traditional practices must be seen as a significant string board for human resource training and development. For this purpose, the evaluation's principal recommendations are:

- To design – based on experience– a human resource development plan that includes in the very least:
  - A massive dissemination strategy that is implemented systematically and is directed towards the common citizen.
  - A focalized dissemination strategy that is directed towards political leaders, high level officials and professional and union leaders.
  - A general training strategy on government procurement for all public officials.
  - A specialized training strategy to elevate the professional level of public officials working in procurement.
  - A strategy to train suppliers by differentiating between business sizes and contract modalities.
- To design *a professionalization plan for procurement offices*. This plan can be based on:
  - Certification of procurement offices based on compliance with a number of minimum requirements that include specialized human resources.

- Gradual increase in the requirements for certification, depending on how e-GP development evolves.
- Periodic prizes for best institutional practices.
- o To establish permanent links between **COMPRARED** and *best practices of e-GP throughout the world*, to stimulate the development of a critical mass of experts and the constant exchange of experiences.

#### **4.6. INTEGRATION OF THE PRIVATE SECTOR**

##### **4.6.1. Desirable characteristics according to international experience**

E-GP demands significant interaction with and participation of the private sector. E-GP involves a market process where modernization, efficiency and the transparency of supply and demand are relevant.

Private sector participation in e-GP is not automatic. Private agents will believe in e-GP's benefits if the system is able to increase their trust in the integrity, impartiality, consistency, transparency and efficiency of the procurement process. Private agencies must be convinced that the system provides open access to a larger range of commercial opportunities and provides support for training and guidance.

The integration of the private sector can be achieved in various manners, including the following:

- o The existence of high levels of exchange between the government and private sector regarding the e-GP topics.
- o The existence of representation for private agents and the decision making bodies of the government that deal with procurement strategies and processes.
- o Easy access to information and consultancy on government policy, regulations and procedures.
- o The existence of feedback for non-successful tenderers and an independent appeal mechanism to handle complaints.
- o Government strategies to equip the business sector to adequately develop electronic catalogues and support the integration of business systems.
- o Government strategies to ensure that suppliers, particularly the small and medium size businesses (PyMEs), have access to the e-GP market through a well distributed infrastructure and other mechanism such as Internet kiosks.
- o Government strategies to help the private sector to compete in regional and international procurement markets and fulfill international commercial obligations.
- o Guarantees that the cost of connecting to the government procurement system is not dissuasive to PyMEs. PyMEs should not be at a disadvantage in the procurement process.
- o Full and easy availability at training and education on procurement.
- o Active participation of suppliers in government activities.

#### 4.6.2. Findings

According to the self-evaluation, integration with the private sector is still weak. The principal findings are the following:

##### **Participation in e-GP development:**

*Consult.* Consultation with private sector organization on procurement is sporadic. There is no permanent round table for discussions.

- *Information.* Private agents can find information and guidance on COMPRARED. The services are free of charge.
- *Support for business transitions to e-GP:* There are currently no strategies to support business in the process of change towards e-GP, such as the development of catalogues according to adopted coding systems, easy access to hardware or software and strategies to redefine internal processes.

*Development of equality in the market.* There is a special registry to promote PyMEs participation in COMPRARED. No policy is foreseen to create the conditions necessary for PyMEs to take advantage of competitive aspects such as deconcentration, localization, flexibility, speed of delivery and the capacity to handle small volumes. The DGABCA has programmed a series of activities in coordination with the Ministry of Economy, Industry and Commerce to help strengthen the PYMES's participation and equality in state procurement.

##### **Support for participation and procurement policies:**

- *Feedback.* There is no institutional mechanism to provide feedback to non-successful tenderers in the selection process.
- *Minimum cost.* The costs to suppliers who participate in government procurement could be reduced. COMPRARED that does not charge to use its portal, but in general and according to the legal framework, entities can charge for the right to participate in selection processes. They often demand guarantees of the seriousness of the offer.
- *Demands for Ex-post requirements.* The ex-post approach has not been applied to requirements (that only require the winning tenderer to present supporting documents and guarantees) as is common in countries that have been successful in procurement modernization. These measures have produced favorable decreases in cost and have increased competition. This proposal has not been made for fear of eventual abuses, but international experience indicates that these difficulties can be prevented and controlled through efficient management of information regarding businesses that have been sanctioned.

### **4.6.3. Risks**

Experience indicates that e-GP development will have a lower margin for error, be more successful and take less time to implement if the private sector is included. The weak participation of the private sector in the general design of the system limits this sector's trust and the speed of its integration.

The lack of policies that make it easy for PYMEs to take advantage of their competitive edge can lead to government procurement that favors large businesses. This tends to happen when only large-volume procurement is used, services are contacted for extensive periods, and tenderers must meet very high business solvency requirements, etc.

The demand that all participants in the tendering process meet certain requirements and provide guarantees instead of applying these conditions only to the winning tenderer creates entry barriers, diminishes competition and considerably increases costs of goods and services for the government.

### **4.6.4. Conclusions y Recommendations**

The participation of the private sector is incipient but adequate conditions exist to gradually increase the level.

In order to facilitate the inclusion of the private sector of e-GP, it is recommendable:

- To create a permanent round table between the government and the private sector on basic e-GP decisions.
- To make progress in reducing entry barriers and charges for participation in particular.
- To make as much progress as possible within the current legal framework to stipulate that supporting documents and guarantees are required only from winning tenderers.

## **4.7. STANDARDS**

### **4.7.1. Desirable characteristics according to international experience**

Standards are essential in e-GP. Without them, technological incorporation is a simple transfer of traditional processes to computers; when standards are in place, procurement processes become efficient, transparent and accessible to all. Nevertheless, the process to establish standards to back electronic supported services is a complex area that is under

construction around the world<sup>46</sup>. This is due to the fact that e-GP is part of e-commerce, which is one of the most accelerated ambits of change in the world.

Standards imply a double challenge: incorporation to make progress in e-GP while remaining attentive to any changes that are produced. The immature state of many, if not the majority of the standards upon which e-GP depends, exposes governments to special risks. These risks include the obsolescence of systems, errors in inter-operability, high operating costs, pressure from diverse interests, functionality that operates below the optimum, limited innovation and, more widely speaking, delays in efforts to incorporate technology in commercial systems.

These financial, commercial and social risks indicate that standards must be examined within the context of government policies, legislation and e-GP leadership. In order to assume the risk, it is important that decision makers and operations managers commit fully to addressing these problems. A general referential framework that is ample and well defined can play a decisive catalyzing role in bringing together the principal developers of e-GP, the different sectors and working networks to promote methodology, models and common standards.

E-GP's underlying standards belong to different ambits that are not strictly technical. The identification of standards depends on: the processes where standards will be integrated, the market in which they will be applied, the inherent qualities of sustainable technologies and the requirements of businesses with regards to government procurement. Some areas that are applying standards include the following:

- **Standards for Procurement Markets** for supplier registries and catalogues as well as market networks and communities.
- **Systemic Standards for Quality** to ensure reliability, security, feasibility, communicability and administration.
- **Standard for Procurement Processes** documentation, legal basis, contracting, process schedules and coordination.

#### 4.7.2. Findings

The Government of Costa Rica has taken a positive step forward by adopting UNSPSC as a coding system for goods and services given that this system is aligned with international practices. In other aspects, the standards components are relatively poorly developed as is explained in the following:

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<sup>46</sup> A vision on the importance and the state of development of standards in the world can be found in the document "e-GP Estándares", available at [www.mdb-egp.org](http://www.mdb-egp.org).

**General policy on standards.** The government currently has no general policy on standards. Some of the standards that are directly related to procurement (registries, annual procurement plan) have been included in COMPRARED development. Other broad application standards, such as security, portability, communicability and interoperability of e-Government are still in the initial revision stage.

**Consensus.** Standards have not been defined with the participation of the private sector. It is necessary to keep in mind that standards can be effectively constructed only with the private sector's trust and experience. This carries very significant implications for the system's operations and costs.

**Standards for process (steps, documentation, contracts).**

- *Standards for steps and procedures.* As is mentioned above, there are currently no dynamics to standardize procedures and procurement agencies continue to use discretionality with regard to requirements and time frames. Procedure standardization requires homogenization and simplification.
- *Standard base documents.* Significant heterogeneity exists amongst the documents utilized for selection and contracting processes. This heterogeneity impedes transparency and can lead to corruption.

**Market standards (registries, coding systems for goods and services).**

- *Supplier registry.* COM PRARED has developed a supplier registry that helps to establish bidirectional communication so that suppliers can inquire about business opportunities according to their preferences.
- *Coding systems for goods and services.* COM PRARED has adopted UNSPSC. The coding system must be extended throughout the public sector and efforts must be made to promote the adaptations needed in supplier catalogues.

**System standards (security, interoperability, etc.).**

- *Security.* The government of Costa Rica plans to utilize digital signatures and certificates to support e-GP security. This decision should be made only after studies have been conducted to ensure that this measure will not become an impediment to competition and e-GP's success.

*Interoperability.* Initial steps have been made for information sharing between public entities within a framework based on criteria for efficiency, service to the community, and reasonable security levels.

**International Interoperability.** For the moment, there is no collaboration between Costa Rica and its international commercial partners to achieve interoperability between

procurement systems. It is probable that the Free Trade Agreements will require this collaboration.

#### **4.7.3. Risks**

Delays in implementing standards greatly affect procurement development: Modern procurement and e-GP systems are, in essence, an application of standards through the use of technology.

The first risk detected comes from the absence of a *general policy* on standards and on the entity responsible of coordinating efforts. Many standards have not been defined and others are being developed through diverse focuses and at different times. This situation has negative effects on the speed and costs of e-GP implementation.

The *lack of consensus with the private sector* causes businessmen to reject applications and slows down the implementation process. It is important to remember that some standards related to e-GP oblige the private sector to make significant changes in their own procedures and information systems. Businessmen will be more amenable to change if they have participated in its definition and feel as if their experience and criteria have been taken into account.

Slow process in *defining standards* (steps, documents, contracts, increases in difficulties in achieving transparency and efficiency) decreases the participation of small and medium businesses and reduces competition.

The *supplier registry* at COMPRARED is an important step forward that may be risked if other registries are kept simultaneously in sectorial entities. The COMPRARED registry should become a single registry as soon as possible.

The suppliers' massive use of digital signatures and certificates –which at first sight seems to be an optimum option and evident necessity– has not been successfully applied in e-GP systems around the world; as such, it is necessary to determine the potential risks to avoid error and unnecessary costs.

#### **4.7.4. Conclusions and Recommendations**

There are clearly no general policies on standards. Process standard development is particularly urgent (procedures and documents). On-line supplier registries constitute a good start. Processes to establish standards require significant efforts in research, consensus and development within the framework of general policies for e-Government progress and in the specific ambit of e-GP.

The adoption of standards should be a priority and emphasis should be placed on the following aspects:

- The establishment of a *general policy framework* on standards for the development e-Government, e-Commerce and e-GP. Under the current institutional framework, this task falls under the Ministry of Finance and requires a wide consensus with diverse powers, public entities and the private sector.
- To establish a multi-disciplinary *working group* from different sectors to propose ways to simplify contracting processes, eliminate steps and requirements and simplify documents and requirements.
- In depth *standardization* of tenderings and contracting documents through the homogenization and simplification of legal bases and technical requirements according to the types of goods and services procured.
- To convert the registry of suppliers in *COMPRARED* into a single registry by eliminating all entity or sector registries.
- To begin studies on international experience and best practices before adopting a *security scheme* for the system to upload tendering information.

#### **4.8. INFRASTRUCTURE AND INTERNET SERVICES**

##### **4.8.1. Desirable characteristics according to international experience**

Infrastructure is an important topic in e-GP. Reasonable connectivity and internet service availability provide access, reliability and support to the users. Services should be comparatively economic for the users. Interoperability must exist between systems (Internet, fax, email) so that they can be linked together (it implies the application of some Standard techniques). The network speed and quality should help achieve this point. Hardware and software should be available and sufficient expertise should exist to provide support and maintenance to infrastructure.

The term “reasonable or adequate” can be quantified through comparative data provided by a set of preparatory evaluations that were previously applied in several countries. The Table and Annex 1 summarize some key aspects of infrastructure and internet services and relate them to the levels of preparation used in this Evaluation. The government’s IT unit should use this table to develop a profile for the nation, provinces or municipalities.

This information can in turn be used to provide bases for development and to verify the responses provided by interview subjects regarding the following subcomponents.

##### **4.8.2. Findings**

**Voice and Data Networks.** The availability of telephone networks (fixed and mobile lines), is intermediate in large cities and low in rural areas.

**Access to telecommunications.** The population's access to telephone lines is also intermediate in the large cities and low in the rural areas. Access in the country is growing much more slowly than in the rest of the region due to restrictions in supply, particularly with reference to cellular lines.

**Access to Internet.** The number of subscribers to Internet is still low in relative terms, but there has been an important expansion in private centers and Internet-cafes that offer Internet services.

**Access Costs.** Telephone and Internet costs in Costa Rica haven't shown the tendency to decline that has been observed in other countries.

**Speed and wide band.** The country has significant restrictions on wide band. Progress on WiFi is almost inexistent. The majority of suppliers and state entities are connected through low speed services with limited band width.

**Hardware and software availability.** In Costa Rica, the availability of hardware and software is good and the prices are similar to those found in the international market.

**Availability of the expertise.** Costa Rica has rapidly developed a significant degree of expertise on information technology and communications. Support services, maintenance and microcomputer repair, and small local networks operate with acceptable waiting times and reasonable costs.

#### 4.8.3. Risks

There are restrictions in connectivity for suppliers and buyers in rural areas and small businessmen in rural zones. Nevertheless, the fact that government procurement is concentrated in the capital means that there are no significant risks to connectivity or e-GP development. In any case, limitations in access and wide band availability will require appropriate strategies.

Many suppliers and municipalities have little or no experience with Internet. If they are not trained on internet use, they may be resistant to participate in on-line procurement processes.

Limitations in infrastructure cause problems with connectivity.

#### 4.8.4. Conclusions and Recommendations

Costa Rica has minimum but sufficient connectivity to initiate the e-GP process if and only if they combine Internet with voice telephone and fax. It is foreseeable that e-GP will stimulate rapid improvement in connectivity.

Any e-GP system chosen in Costa Rica should take into account limitations in infrastructure and connectivity to establish strategies that allow it to function within the existing framework, at least in the initial stages. These factors include:

- Not proposing processes that oblige the suppliers or buyers to be on-line.
- Avoiding establishing competitive processes that give an advantage to suppliers with wider band width.
- Standardizing and simplifying documents related to procurement and contracting processes to make them “lighter” and thus more accessible with limited band width and slow speed access.
- Establish “call-center” services.
- To define a security scheme that takes into account the fact that many suppliers and buyers are using public Internet services.
- To place special emphasis on training procurement entity personnel and suppliers in the general use of Internet and the use of applications related to government procurement.
- To propose a public policy for connectivity development, expansion in cellular telephone offerings as well as width and band.

## **4.9. SYSTEMS IN OPERATION**

### **4.9.1. Desirable characteristics according to international experience**

When this report refers to systems, it means a set of resources (technological and institutional) whose integration and operation guarantees the complete functioning of an e-GP service (tendering, contract management for online purchases).

Some governments have begun initiatives to establish specific procurement systems with electronic support. This may or may not be linked to a global strategy to achieve e-GP. The sub-components listed below can be used as a guide to consider whether or not these systems can be incorporated within an integral e-GP strategy.

**From and Administrative perspective, the Government:**

- Has developed a Strategic Plan in e-GP to link e-GP to with other “electronic initiatives” and facilitate the development and application of electronic procurement system (s).
- The government is leading the decision making process on the e-GP system.

- An electronic procurement market and process standards required have been identified and adopted.
- There is a leader government agency to oversee the development and application of the system (s).
- The Government has control over the future development and use of the system (although services and support may be provided by the private sector).

**From a Structural Perspective**, the initial systems (in general systems for tendering) have been developed and implemented with the following functionalities:

- Systems are based on Internet (Web-Web).
- The information on all procurement opportunities is published on only one internet site.
- The suppliers do not need to own hardware or software to utilize the system, beyond the need for navigator and an Internet connection.
- The buyers and suppliers can register to do business on-line.
- The system has a search engine to help the user to find information.
- The legislation, policies and guides on procurement and the information regarding the use of the system can be consulted on-line.
- There is open access to all tendering documents.
- System access for registered buyers and suppliers is either free or low cost.
- Tendering documents can be electronically downloaded.
- Tenderer proposals can be electronically downloaded.
- The system ensures the security and privacy of information.
- The public can access information on the tender evaluation and award process.
- Information on awards is accessible to the public at no charge.

Basic interoperability and procurement standards are applied to all systems.

It is critical to guarantee that the tendering documents, policy and legislation published on the electronic system are legally valid. This means that the information is equivalent to the original and is not merely a representative copy.

The key question that arises from this evaluation is: “to what point can electronic procurement systems be developed to be compatible with an e-GP long term strategy?”

#### **4.9.2. Findings**

COMPRARED is a very important step and provides valuable perspectives for future e-GP development.

COMPRARED has the following characteristics:

##### **General Characteristics:**

- *Based on Internet.* COMPRARED has been conceived as “Web-Web”, in such a way that government procurement agencies and suppliers can use the software available

on Internet and ordinary communication systems without having to acquire or install any additional support.

- *Free Access and no restrictions.* The information available in COMPRARED is free and accessible to all ( with the exception of confidential private proposals).
- *Tendency towards a single portal.* The COMPRARED portal is designed to contain all procurement information generated by the central government. Notwithstanding, significant duplicity exists given that information on procurement can also be found in the portals of various public entities. On occasion, the information published on COMPRARED and the institutional portals is out of sync. It is no longer necessary to publish notifications in newspapers.

### **Basic Information:**

- *Entities covered.* COMPRARED covers executive entities at the central level. Autonomous entities are not included in the system and currently publish procurement information on their own portals and according to their own rules. Entities from the legislative and judicial branches are also not included and no control is exercised over procurement at the municipal level. Seventy-five percent (75%) of total procurement with public funds is outside of COMPRARED's scope.
- *Procurement planned.* Beyond what can be found in procurement plans, which tend to give approximate dates only, no information currently exists on current and future tendering processes.
- *Current procurement.* COMPRARED provides information on the majority of calls to participate in tendering processes. Citizen Action has been very effective in achieving this coverage.
- *Results and awards.* COMPRARED contains free information on the awards granted, including an award description, amount, quantity, and time frame.
- *Tender delivery.* COMPRARED is still not equipped to handle this point.

**Inter-connectivity.** COMPRARED still suffers from low connectivity, but plans are underway to implement its on-line articulation with the Integrated System for financial management. COMPRARED's interoperability with other data bases (such as the registry of persons, mercantile inscription, tax collection, and legal sanctions) is still either low or inexistent.

**Financing.** The system currently has no plan for financing and financial sustainability in the long-term.

**Multilateral Development Banks.** COMPRARED's new version seems to be compatible with the Multilateral Development Banks' requirements to use e-GP in credit, loan, and donation operations.

#### 4.9.3. Risks

The initial phase of COMPRARED's development (informative phase) implies little risk. Nevertheless, it is important to keep the following in mind:

- The duplicity of information contained in COMPRARED and the Web pages of various entities is not only useless and redundant. In fact, it carries with it the high probability that inconsistencies will be reproduced in both portals (due to differences in time frames, omissions, or errors). These inconsistencies undermine efforts to develop trust in the electronic system and obligate suppliers to make unnecessary verifications that could easily be avoided.
- The fact that COMPRARED is not present in large national entities, other bodies of public power, and the municipalities diminishes transparency and impact. Delays in consolidating these entities within the COMPRARED system stimulate duplicity in efforts and created policy barriers for participation.
- The analysis of the infrastructure and Internet services show deficiencies in connectivity. As such, much of the population will be unable to access information if said access is based only on Internet.
- Financial sustainability in the long term should be examined in order to avoid risks associated with dwindling funds and to guarantees further progress.

#### 4.9.4. Conclusions and Recommendations

Development of the e-GP system has gotten off to a good start given that it already offers incipient but important services. COMPRARED is at a critical juncture. Its progress depends on significant institutional change throughout the procurement system.

To fine-tune COMPRARED, it is important to keep the following in mind:

- All duplicity of information must be eliminated to convert COMPRARED into the single official source of information on procurement and contracting throughout the private sector. If this information cannot be eliminated from the entities' Web pages in the short-term, it should be obligatory to publish all information on the COMPRARED portal first and then transfer an electronic copy to the entity Web pages. The only valid official information on procurement should be found on COMPRARED.

- 
- Accelerate the incorporation of autonomous entities and municipalities in COMPRARED. Although it will be difficult to accomplish this through the regulatory venue, it is perfectly feasible to operate via the agreements and commitments that entities have to ensure transparency and the need to respond to pressure from citizens.
  - To create, in as little time possible, a statistical module (time frames, costs, prices, types of goods, types of suppliers, etc.) with information on state procurement and contracting.
  - To facilitate the reception of business opportunities and personalized information via written and voice messages sent by faxes and registered telephones.
  - To publish all tendering base-documents on COMPRARED, ensure their simplicity and standardization, and legally guarantee that they are originals.
  - To elaborate the necessary studies on COMPRARED's financial sustainability.

## **Annex 1. SELF-EVALUATION METHODOLOGY**

The self-evaluation process has the following characteristics:

The evaluation is conducted by employees and managers from national public, private and community bodies most involved in the development of government procurement through both manual and electronic means.

The evaluation is directed towards measuring the level of preparation to make the transition to e-GP. For this reason, it focuses on identifying what does and does not exist in the current procurement environment to best determine the path to take when transitioning from manual mechanisms to e-GP.

The evaluation guide (available at [www.mdb-egp.org](http://www.mdb-egp.org)) focuses on the 9 key components with which to plan the transition to e-GP. These components were based on the e-GP's strategic bases, shown in Table No.2.

The preparation level has been based on the best practices derived from international experience with these components. The premise is that if the current procurement environment shows an elevated level of preparation with regard to these components, the country is well positioned to adopt e-GP. On the contrary, if the level is low, the key components will need to be constructed prior to e-GP's adoption. As such, the implementation strategy should adapt to these conditions and place emphasis on the weakest areas.

To conduct the evaluation, the components were divided into individual sub-components. The participants in the evaluation verified the information available to determine the level of preparation for each sub-component. Based on this information, it was possible to establish the general level of preparation for each component.

Finally, the participants in the joint evaluation freely expressed their opinions on the points that they considered most relevant to achieving an adequate transition to e-GP in the country. They were also invited to voice opinions regarding the principal challenges that must be faced.

The four levels of preparation relative to each one of the components were defined on a scale from 1 to 4 according to the characteristics shown in Table 3.

The evaluation guide was distributed to the participating bodies more than two weeks prior to the evaluation so that participants could become familiar with the content and search for any necessary information from adequate sources.

The self-evaluation exercise was complemented by focalized interviews and an analysis of relevant reports.

**TABLE No. 2**  
**STRATEGIC BASES AND THE FUNDAMENTAL COMPONENTS OF E-GP**

STRATEGIC BASES	COMPONENTS ANALYZED HERE
<p><b>Institutional capacity:</b> the government's capacity to guide, lead and promote the necessary changes.</p>	<ol style="list-style-type: none"> <li>1. <b>Government leadership:</b> common vision, entity leader, assignment of resources, support for implementation.</li> <li>2. <b>Human Resource Development:</b> education, development of abilities, development of expertise, and professionalization.</li> </ol>
<p><b>Governability:</b> adoption of rules, management bases and monitoring and evaluation to support e-Gp adequately.</p>	<ol style="list-style-type: none"> <li>3. <b>Strategic and Operational planning:</b> strategic planning and re-engineering of administrative and process protocols.</li> <li>4. <b>Policies:</b> definition of the objectives and guidelines to be applied consistently.</li> <li>5. <b>Legislation and Regulation:</b> rules to maintain, internally and externally monitor efficiency, performance and the preservation of e-GP's total focus.</li> </ol>
<p><b>Functionalities of Business and Standards:</b> sustainable infrastructure, support services and common standards to ensure that procurement services are accessible, integrated, and consistent.</p>	<ol style="list-style-type: none"> <li>6. <b>Infrastructure and Internet Services:</b> capable of ensuring reasonable access to and the quality of electronic services and their sustainable development and maintenance.</li> <li>7. <b>Standards:</b> development of standards for management, technical operations and procedures to guarantee the consistency of the e-GP focus and the interoperability of all participating systems.</li> </ol>
<p><b>Third party participation:</b> ensure that the private sector can participate and be involved in e-GP.</p>	<ol style="list-style-type: none"> <li>8. <b>Integration of the private sector:</b> suppliers are apt and ready to participate in e-GP.</li> </ol>
<p><b>Application of technology:</b> technology that is appropriate, integrated, sustainable and modifiable and which is developed gradually to provide services for tenderings, contract management, and on-line procurement.</p>	<ol style="list-style-type: none"> <li>9. <b>E-Gp systems in operation:</b> planning, selection, development, implementation and support of electronic procurement systems to set up services for tenderings, contracts and on-line operations..</li> </ol>

**TABLA 3**  
**LEVELS OF PREPARATION OF THE SUB-COMPONENTS**

<b>Level of Preparation (scale from 1-5)</b>	<b>Description</b>
1	No evidence that the sub-component is well developed and no evidence that support exists.
2	Little evidence that the sub-component is well developed and limited or no evidence that it has support.
3	Some evidence that the sub-component is adequately developed and supported.
4	Sufficient evidence that the sub-component is adequately developed and supported.

**ANNEX V**  
**PLAN OF ACTION RECOMMENDED**

<b>Issues Identified</b>	<b>Recommended Actions</b>
<i>Improving the external control function</i>	<p><i>Simplify processes for execution and control.</i></p> <ul style="list-style-type: none"> <li>• The CGR should evaluate its tendency to issue technical opinions on contracting processes to instead concentrate on strengthening internal auditing of contracting entities, limiting interventions to ex-ante operations.</li> </ul>
<i>Strengthening the normative function</i>	<p><i>Offer a strategic vision and consistent management of contracting policies and instruments..</i></p> <ul style="list-style-type: none"> <li>• Establish a regulatory body with the resources, mandate and technical capacity to develop and implement a strategic vision of the public contracting system (expand DGABCA's mandate).</li> <li>• Strengthen DGABCA (financially and politically) to facilitate the tasks of institutional procurement units in activities to establish norms, review and monitor planning and execution of contracting.</li> <li>• Set up an inter-institutional committee that includes DGABCA, CGR, and the autonomous institutions to promote a system that integrates both the central government of autonomous entities.</li> </ul>
<i>Strengthening of contracting operations</i>	<p><i>Strengthen the contracting entities to plan, execute, follow up on and evaluate their contracting activities.</i></p> <ul style="list-style-type: none"> <li>• Adopt a consistent system of thresholds for the use of the different methods of contracting established in the LCA.</li> <li>• These thresholds should be determined after an analysis has been made of the risks implicit in each method, the contract amounts, each institution's capacity, and market supply.</li> <li>• Identify and disseminate best practices for planning, execution, performance</li> </ul>

	<p>evaluation, supplier registries, and the classification of goods.</p> <ul style="list-style-type: none"> <li>• The DGABCA could facilitate the development of standardized procurement instruments such as tender documents for procurement of goods, works and non-consulting services as well as common performance indicators.</li> </ul>
<p><i>Develop and expand COMPRARED's capacities.</i></p>	<p><i>Maximize the utilization of information technologies and their applications in public contracting.</i></p> <ul style="list-style-type: none"> <li>• COMPRARED should become a fundamental tool for improving transparency and efficiency in public contracting.</li> <li>• COMPRARED should expand to serve both central government and autonomous entities.</li> <li>• Identify and evaluate information systems dispersed in different public entities to integrate them with COMPRARED.</li> </ul>
<p><i>Prioritize the efficiency of contracting with emphasis on autonomous entities.</i></p>	<p><i>Conduct institutional and performance evaluations of contracting in the most developed autonomous institutions.</i></p> <ul style="list-style-type: none"> <li>• Evaluations could be conducted in the Social Security Office of Costa Rica, the Costa Rican Institute of Electricity, and the Petroleum Refinery of Costa Rica.</li> <li>• Identify best practices and systems that are generated in contracting management (planning, operations and control) in these institutions.</li> <li>• Utilize these evaluations to improve efficiency in contracting at each entity and generate models that can be replicated in the rest of the public sector.</li> </ul>

## ANNEX VI

### **PROGRESS IN THE IMPLEMENTATION OF ACTIONS AND RECOMMENDATIONS FOLLOWING THE CR CPAR REPORT OF JUNE, 2005**

1. The objective of this section is to reflect on the actions and progress achieved in the implementation of the Plan of Action referred to in the Executive Summary and Chapter III, Section IV of this report. The results of this assessment were presented by the Government of Costa Rica at the Workshop for the Final Review and Discussion of the Progress Report on the Public Contracting System (CPAR) that took place on the 9<sup>th</sup> and 10<sup>th</sup> of November of 2006 in San Jose, Costa Rica. The following is a summary of the topics and progress reached.
2. Concerning the recommendations of the report to strengthen the normative and supervisory functions of Policy and create a Supervisory Body for the Public Contracting System in paragraphs 17 and 85, the Government has put together a reform project on the Law of Administrative Financing. This reform proposes designating the Head Office of Goods and Administrative Contracting as the Supervisory Body of the Public Contracting System. At the time of the workshop, the bill was being reviewed by authorities at the Ministry of Finance. Once this bill is approved, DGABCA's organization should be strengthened to ensure its leadership role in regulation and supervision.
3. Regarding the recommendations in paragraphs 17 and 89 to establish an Inter-institutional Committee to review and improve public contracting management and the promotion of best practices in the areas of planning, implementation and performance monitoring of public contracting, the Commission for Transparency and Ethics in Government assigned to DGBCA, from February of 2006, the coordinating function to the Inter-institutional Technical Committee on Public Contracting. This commission is currently made up of representatives from the most relevant Institutional Procurement Units in the country, including the Social Security Office of Costa Rica (CCSS); the Costa Rican Institute of electricity (ICE); the Municipality of San Jose; the Municipality of Belen; the Supreme Tribunal of Elections; the National University; and the Administrative Contracting Division of CGR. Thus far, the commission has concentrated its efforts on reviewing and writing up the new Regulation on Administrative Contracting that went into effect in January of 2005; the strengthening and organization of the Institutional Procurement Units; the harmonization and standardization of public contracting processes; the planning and programming of procurement based on budget planning; and an employee training program.
4. With regard to the recommendation in the report in paragraph 18 on the implementation of a second phase of COMPRARED. In September of 2006, began the implementation of the second phase with the incorporation of new information elements that are relevant to the procurement cycle, including: electronic tendering; requests for

review recourses; corrections; clarifications and notifications; information on the progress of different processes; award and publication of contracts; the use of Inverse Auction to procure common and continuous use goods. At this point, all the institutions of Central Administration are included and it is hoped that other entities of the public sector will soon adopt COMPRARED as its information system. In addition, the Operating Regulation of COMPRARED was drawn up to regulate system use and establish that the system must be used by all Central Administration entities.

5. In order to consolidate the second phase, the Government should concentrate its efforts on encouraging all entities to adopt COMPRARED as a single system for procurement. The objective should be to incorporate the largest amount of information possible on the characteristics and capacity of both the local and international market to goods and service procurement in the public sector. The end goal is to ensure the integration of all statistical information into only one system and to utilize this information as basic input to achieve other objectives such as improving the cost-effectiveness of procurement programs, procurement planning, the consolidation of volume items with a high potential for generating savings through the use of modalities such as the Framework Agreement, and using the system to strengthen the supervision, control and auditing functions in public contracting.

6. Regarding the recommendations on strategic planning for government procurement indicated in paragraph 95 of the report, the Government passed the Regulation for Administrative Contracting in January of 2005. This norm regulates the use of Framework Agreements. Efforts are in progress to design procedures to use this modality and adapt COMPARED so Framework Agreements can be used once the Regulation comes into effect in January of 2007.

7. With regard to the recommendation in paragraph 96 of the report on the need to utilize performance indicators, the Government developed a follow up module for performance indicators within the effort to implement the new version of COMPRARED in September of 2006. Some indicators have already been defined to monitor the management processes of user institutions.

8. Regarding the recommendation to conduct an in-depth analysis of digital certification strategy that takes into account potential risks and unnecessary costs, the Government has indicated that the administration of this type of security risk has been contemplated in the Law of Certificates, Digital Signatures, and Electronic Documents No.8454 passed in October of 2006. The Regulations of this law will be effective from March of 2006.

9. With regard to the considerations made in Annex II of the evaluation report on the development and strengthening of PYMES: A coordinated effort between DGABCA and the Ministry of Economy resulted in the development of a joint plan to strengthen the PYME's participation in State Procurement in Costa Rica. As a result, in September of 2005, the Special Regulation for the Promotion of PYMEs was passed to facilitate PYME's participation in the supply of the goods and services required by the public

sector. This Regulation, which will be effective as of September of 2005, also stipulates that all entities must publish their procurement plans in COMPRSRED. In this way, the PYMEs will have access to information on procurement opportunities in the public sector. The Regulation will allow public entities to access the National Registry of PYME suppliers- developed in COMPRARED- to find out more about the goods and services of PYMEs and invite them to participate in procurement processes.



MAP SECTION

