

RECOMMENDATIONS FOR THE PUBLIC PROCUREMENT SYSTEM OF THE REPUBLIC OF COSTA RICA



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Introduction

The following brief and its recommendations were prepared by the [Institute for Development of Freedom of Information](#) (IDFI), together [Citizen Center Association for Open Society Studies \(ACCESA\)](#), based on the assessment of the Public Procurement Law (PPL) of Costa Rica, its sub-legal acts and other legal texts. The assessment itself is based on the Transparent Public Procurement Rating (TPPR) [Methodology](#), a tool created by a multinational alliance of CSOs, aiming at identifying strengths and weaknesses of PPLs around the globe.

The Methodology is largely based on best international standards from organizations, such as the EBRD, WTO, OECD, EU and OCDS, and covers all the major components of any public procurement system, from the nature of the legislation to the complaint review process, with focus on the transparency of public procurement systems. The assessment covers the following key characteristics (values) of a well-functioning public procurement system: **Efficiency, Transparency, Accountability and Competitiveness**.

The aim of this document is to offer insight into areas of potential improvement for Costa Rica's public procurement system considering the experience and best practices [identified](#) by the TPPR Project in 18 countries in the Eurasian region. The final results of the quantitative evaluation of Costa Rica's public procurement legislation will be made available on the TPPR [website](#) in January 2019.

Overview

Costa Rica's public procurement legislative framework has been in place since 1996 - the Law on Administrative Procurement (Contracting) No. 7494, along with its corresponding Regulation, which was approved in 2006. The PPL of Costa Rica received a number of modifications, clarifications and improvements through the years, and it's complemented by a series of regulations and directives that deal wholly or in part with the procurement system. Before describing the legal and institutional set-up of Costa Rica's public procurement system, it is necessary to clarify that major sectors of the economy are in fact outside the Law on Administrative Procurement (Contracting) and procurement in those sectors are regulated separately. While these regulations must be in line with the principles of the Law on Administrative Procurement, certain aspects of their procedures are different.

This is the case, for example for the Costa Rican [Institute of Electricity and Telecommunications \(ICE\)](#), one of the largest state-owned enterprises, which publishes the majority of tenders for their products and services via its website. The Costa Rican Institute of Social Security (Caja Costarricense de Seguro Social-CCSS) is the second largest government entity that procures drugs, pharmaceuticals, medical equipment and supplies separately, outside the public procurement system. All information on procurement possibilities of the CCSS is available on its [website](#). Same approach applies to the INS Group (National Insurance Institute), which is governed by the Regulation of Contracts exempted from the ordinary procedures of Administrative Contracting in accordance with article 9 of the Law of the National Insurance Institute.

Therefore, Costa Rica's public procurement legislative framework is multi-layered with important economic and social areas being regulated separately. Despite the fact that all these public institutions

or companies have their own separate websites for public procurement, the PPL article 40 guarantees that even procedures regulated by special regimes must go through the unified electronic public procurement system.

Costa Rica has a centralized electronic public procurement system – [SICOP](#), which according to the PPL (article 40), should be the sole means for procurement and communication between stakeholders. Public procurement legislation stipulates that all procurement procedures must be executed digitally through this portal, which is free for the general public to use, and that all documents and information related to the procedures must also be uploaded to the portal. Article 148 of the Regulation to the Administrative Contracting Law No. 33411 states that - the contracting file (record) must be accessible and kept updated in the SICOP and that it must include all information regarding each of the stages of the different administrative contracting procedures, always guaranteeing their transparency and publicity; except the information that is granted confidentiality.

The legislation also stipulates that all these documents must be kept in open and interoperable formats in order to ensure equal access and integrity. Legally speaking, this description is closest to the definition of an electronic public procurement system, which is based on machine-readability of data and public access to this information.

In Costa Rica there is no single governing body responsible for monitoring and coordinating the public procurement procedures. These functions are divided between the Office of the Comptroller General and the General Directorate of Property Administration and Administrative Contracting (GDPAAC). According to article 3 of the Administrative Contracting Law No. 7494, Comptroller General monitors public procurement processes and sub-section c of article 103 states that the GDPAAC evaluates the policies and procedures for contracting, with the purpose to adjust them where necessary.

The PPL of Costa Rica provides substantial guarantees for access to public procurement related information for almost all phases of the public procurement process. The PPL upholds the principles and values of transparency, efficiency, and competitiveness. Despite some gaps of the law, there are explicit requirements for public institutions to comply with a number of best practices (such as equal treatment between bidders, sanctions for corruption, right to review for all parties, detailed information for bidders in the notices of intended procurement, access to contract related information etc).

Nevertheless, there are evident gaps between what is written in the legislation and what is actually being implemented. According to a [recent report](#) by the office of the Comptroller General, of September 13th 2017, the date by which according to the law all procurement activity should have migrated to SICOP, only 35.8% of the public institutions were using the system.

There are important steps being taken currently to include more procedures and public institutions in the portal, but at the moment at least 30% of the public institutions still don't use SICOP. The lack of implementation of the law is also apparent when visiting the SICOP, as only information on public procurement from 2018 (not a full database) is available. Access to individual tenders are ensured by SICOP, however machine-readability of this database is not (CSV or JSON formats). During the assessment process of Costa Rica, IDFI and its partner organization could not extract information from SICOP and had to rely on Comptroller General's reports to gain information on the performance of the public procurement system. Costa Rica has legal guarantees on access to information in bulk and such guarantees should be fulfilled in practice as well. Public procurement represents a substantial part of

Costa Rica's economy. For example, Costa Rica's public procurement budget in 2017 reached an equivalent of 15.5% of GDP. Hence, it is crucial for the country's economic welfare that the PPL is implemented fully and that the electronic system is adapted to modern standards of public procurement.

Considering the above-mentioned and based on the TPPR Methodology, IDFI would like to offer the following recommendations for Costa Rica.

Transparency

Machine-readability of data – Costa Rica has an interesting approach towards regulating transparency of public procurement related information. The PPL provides two main articles, which ensure that all information on different phases of public procurement is accessible to the public.

Article 40 of the Administrative Contracting Law No. 7494 establishes that all contracting activity regulated by this law, as well as activities regulated under any special regime, must be carried out through the unified electronic system SICOP. SICOP is defined as unique centralized public procurement management system capable of storing and reproducing all the information related to each of the stages of the procurement process. It further elaborates that SICOP will guarantee the total transparency and publicity of each one of the procedures, documents and information related to them.

Furthermore, Article 148 of the Regulation to the Administrative Contracting Law No. 33411 states that SICOP must be arranged in such a way as to provide information in digital formats suitable for the public to download copy, manipulate and reproduce.

Therefore, legally speaking, Costa Rica's PPL ensures machine-readable access to information on public procurement. In practice, SICOP has modules built in where information on tender announcements, tender candidate applications, bids, contracts and contract performance (acts of delivery and acceptance and payments), subcontractors, complaints and dispute resolutions are available on an individual basis. Nevertheless, machine-readable access to bulk information is not available as of yet.

As Costa Rica has the legal and technical infrastructure in place, it is highly recommended that the country ensures machine-readable access to full information present on the SICOP. This way, it will have the potential to be compliant with the TPPR Standard, as well as other international standards such as the Open Contracting Data Standard not only legally, but in practice as well.

Access to quality check reports and milestone reports of execution – another loophole in Costa Rica's legislative framework is that it does not guarantee public access to quality check reports and milestone reports (where applicable) on works or services to be delivered by the contracted economic operators. Ensuring access to these datasets and providing relevant information in machine-readable format will enhance the analytical potential of Costa Rica's public procurement system. Therefore, it is recommended that legislative guarantees for access to quality check reports and milestone reports on contract execution are provided either in the Administrative Contracting Law No. 7494, or its Regulations.

Efficiency

Cost-effectiveness vs. Simplicity – Costa Rica's PPL does not incorporate two-tier procedures where price is not the only determinant of the winner of the tender. The only procedure, which resembles this type of procedure, is tender with prequalification detailed in the Regulation to the Administrative Contracting Law No. 33411, article 105.

According to this procedure, the procuring entity may promote tenders with prequalification, when it deems appropriate to its interests, for agility or because the object of procurement is not fully defined. The invitation to such procedure is made through the SICOP.

In the specifications, the legal, technical and financial requirements must be indicated, as well as the object or service that is intended to be contracted and its main conditions. In this first stage, the requirements and attestations that the interested parties must comply with will be listed, as well as the value assigned to each factor, in order to determine if they advance to the next stage.

Additionally, article 156 of the same regulation states that all procedures for contracting a public work will be preceded by an environmental impact study, according to the characteristics established by the competent authority. This implies that environmental concerns are integrated in the PPL and the price alone cannot be the deciding factor for choosing the winner, when dealing with procurement of public works.

The PPL, however does not mention concepts such as life-cycle cost, meaning that procurement of one product or service or work from a certain economic operator may be cost-effective in the long-run (due to guarantees or better quality), despite the fact that other offers may be lower in price. Existence of such concepts in the PPL will render the public procurement system more reliable, effective and diverse.

Lack of clarity on quality control (QC) procedures - Regulation to the Law of Administrative Contracting No. 33411, Article 8 paragraph c) establishes that the administrative decision that initiates the procurement procedure must accredit the quality control procedures that will be applied during the execution of the contract and for the reception of the work, supply or service.

However, no legal document defines the procedures clearly. Some articles mention when these checks should be made, yet again little information and detail is provided about those responsible for carrying them out. For example, article 61 of the Administrative Contracting Law No. 7494 indicates that "the Administration will officially receive the works, after having the technical assessments that prove compliance with the terms of the contract, which will be recorded in the respective tender records.

Lack of clarity on the technical and procedural aspects of quality control is detrimental for the overall quality of public procurement and the efficiency of the public procurement system. It is recommended that procedures guiding quality control for acceptance of goods, works and services are well-defined and spelled out in the PPL and its sub-legal acts.

Competitiveness

Unreasonably short time for submitting bids – Costa Rica’s PPL, Article 42 of the Administrative Contracting Law No. 7494, states that the minimum period to receive offers is fifteen working days, counted from the day following the publication of the notice to participate and until the day of the opening of bids. However, with regard to small-scale contracts, Article 144 of the Regulation to the Law on Administrative Contracting No. 33411 states that the entity will give a minimum period of one day and a maximum of five working days to potential suppliers for the submission of bids.

Short bid submission periods are a risk factor in public procurement. If insufficient time is provided for submitting bids and specific requirements are set to economic operators, it may be difficult to prepare necessary documents in due time. This may lead to reduction of competition, as certain potential suppliers may be dissuaded to take part in the tender they know they will not be able to prepare for.

Additionally, when short period of time for bid submission is a hindrance, economic operators with connections in the procuring entity may have an advantage of receiving information in advance, outside the electronic public procurement system. Such procedures may be a fertile ground for corruption and deliberate reduction of competition in public procurement.

The WTO GPA standard recommends that procuring entities should have a period of at least 10 working days to receive offers. It is recommended that the PPL be amended to extend the bid submission period to a minimum of 10 working days for all types of public procurement procedures. Such decision may positively affect levels of participation in public tenders, hence increase competition, and may curtail the risk of corruption in small-scale public procurement opportunities.

Accountability

Consultation with the private and civil society sectors – Costa Rica’s public procurement legal framework should include a mechanism for wider consultations with the business sector, civil society and the general public on public procurement policy matters. Such mechanism can be mandatory and frequency for such consultations can be defined by law. This mechanism will prove useful as Costa Rica still lacks popularity of electronic procedures in public procurement. As mentioned above, there are still multiple procuring entities that do not use the SICOP, which is a definite discouragement for economic operators to register on the platform and fully use the benefits electronic system. Regular consultations with the civil society and the private sector may create a demand on e-procedures and prompt the procuring entities to use the system. Such consultations may also prove to be useful when Costa Rica will be adapting its public procurement system to provide information in machine-readable formats to the public. It is the general public, private sector and the civil society organizations that are the primary beneficiaries of the public procurement system and gathering information on their needs will reduce the risks of mistakes or unnecessary errors in this process.

Declaration of Conflict of Interest – In the case of Costa Rica, there is no regulation that makes reference to the obligation to declare in writing a conflict of interest on the part of the members of the tender commission, responsible for making decisions on tender awards. This is a loophole of the PPL of Costa

Rica that can be used for corrupt practices. Despite the fact that the law describes exclusion grounds for economic operators, nothing is mentioned on the decision-makers.

Declaration of conflict of interest can be a useful tool to fight against possible cases of corruption, when member(s) of the tender commission may favor their preferred candidate in tender. Without such declaration and access to this document, potential corrupt practices may be treated as mistakes or negligence cases. When decision-makers of the procuring entities sign conflict of interest declarations, any detected sign of corrupt practice, as defined by Costa Rica's law, will be treated as deliberate criminal act. Such tools make public procurement processes more accountable and serve as additional safeguards against corruption in public procurement.