



Doing Business in Dominican Republic

Government Contracts and Procurement Law

Government acquisitions of goods and services and concession of infrastructural works in the Dominican Republic (DR) is governed under Public Procurement Law 340-06, enacted on August 18th of 2006, as amended.

Government Procurement Law 340-06 pursues the efficiency and transparency in the management and assignment of public funds for purchases, contracts and concessions. The Law overhauled the prior procedures dispersed among different legislations, combining them into one legislation that incorporates the best national and international practices on the matter of public procurements.

The aim of Law 340-06, is to establish the principles and general rules for the public procurement related to goods, works, services and government concessions, as well as the modalities to be considered for each tender.

According to Law 340-06, the governmental institutions subject to the provisions established, are the following: (1) the Central Government; (2) non-centralized institutions and financial and non-financial autonomous institutions; (3) public institutions of social security; (4) National District and municipal councils; (5) Government owned companies, financial and non-financial; (6) Any other entity that executes agreements for the acquisition of goods, services, works and concessions with public funds.

Pursuant Law 340-06, all Government bodies and institutions mentioned above, must follow the guiding principles established, which are the common norms in the execution of their actions with the general public. Such principles are: Efficiency; Equality and free competition; Transparency and publicity; Economy and flexibility; Equity; Responsibility, morality and good faith; Reciprocity; Participation; Reasonability.

Processes and Persons to which the Law is applicable

The processes in which the Government Procurement Law 340-06 applies are: the purchase and subscription of good, services, consulting and rent with option of purchase and lease, as well as any other contracts not excluded or subject to a special legislation; and finally the contracting of public works and concessions.

In relation to the application, Law 340-06 establishes that it is applicable to any natural and legal person, national or foreign that offers goods and services required by any of the government entities. Also, the government procurement provisions apply to two or more persons that provide an offer acting as a group or as themselves, establishing under a legal document that they are performing their actions under such conditions.

The Registry of Government providers

Before providing goods and services or executing agreements for concessions with the Dominican Government, it is mandatory to be registered in the Registry of Government providers (RPE). In this sense, the specific requirements for the registration at the RPE are established under Law 340-06 applicable regulations.

However, as general requirements, the natural or legal person intending to execute with the government should demonstrate its capacity satisfying that:

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- It has the professional and technical qualifications, the financial resources, equipment and any other physical means, showing the experience and the appropriate personnel for the execution of the contract;
- That its social purposes are compatible with the objective of the contract;
- It is solvent and it is not under any bankruptcy procedures;
- It complies with its tax and social security obligations.

The Law 340-06, clearly establishes that the government entities should not impose any additional criteria, requirements or procedures in order to evaluate the suitability and capacity of the applicants different to the one previously described on the terms of reference for the public tender. Also, government entities should not disqualify an applicant when the information submitted is incomplete if they can be amended.

Public Procurement Procedures

According to Law 340-06, there are five (5) selection procedures to which contracting with the Dominican Government is subject to. Such procedures are:

- **Public Tender:** is the administrative procedure conducted by Government entities in order to call for public and open bids, in which they are summoning any interested person for the formulation of proposals, that among them, the most suitable proposal will be selected in accordance to the Terms of Reference of the tender;
- **Restricted Tender:** is an exclusive tender by which a limited number of providers are invited to participate, due to their speciality in the goods to be acquired, the works to be executed or the services that would be provided;
- **Works Contest:** is the aleatory selection of participants that comply with the requirements and conditions for executing infrastructure works subject to design and cost determined by the summoning institution;
- **Price Comparison:** is an open call to any natural or legal person registered on the RPE. It is only applicable for purchase of commodity goods with standard specifications, the acquisition of services and minor works;
- **Inverse Auctions:** when the purchase of commodity goods with standard specifications is undertaken by using electronic means, the applicant whose proposal is of minor cost would be selected.

According to the provisions established by Law 340-06, all the practices covering the purchase of goods, services and works should be at all times carried out with a context of transparency that will be based on public disclosure and communication of all the actions undertaken by the government entities.

Claims, challenges and controversies

All the issues that arise by virtue of the provisions under Law 340-06, may be resolved by the administrative procedure before the Government entity that has served as contractor. The Government entity should solve the issue and make a decision in the term of fifteen (15) days. Such decision shall be issued by the means of a resolution that may be appealed before the corresponding entity in charge of the matter of Public Procurements.

If after all the steps taken, the issue is not solved, the case can be submitted before the Administrative Jurisdiction Courts or arbitration by decision of the parties.

Questions about this Publication can be directed to Our Team at 809.472.2222 (info@aclaw.com) or to our lead contact Maria Arthur (marthur@aclaw.com).

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