

# Public Procurement from a Chilean Perspective

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# *Public Procurement from a Chilean Perspective*

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# Earthquake 27 February 2010



# Chilean Case: “Emergency Bridge Bio Bio” after 2010 earthquake



# The case of the “emergency Bridge in BioBio” after the 2010 earthquake

## Problems

Use of military regulatory framework.

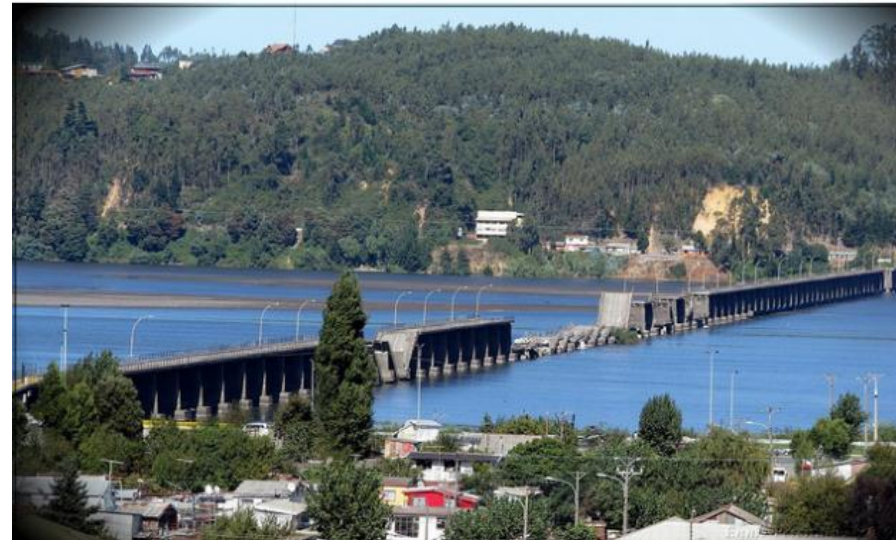
National Security exception was interpreted too broadly.

The contract for the purchase of an emergency bridge was awarded directly.

## Result

Former Defense Minister and high officers had to leave their posts.

The “emergency bridge” cost US\$3 mill. more.



# 1. Legislative Framework. National

Nº 19.886 *Ley sobre contratación pública de bienes y servicios* (Supplies and Services Contract Act) 2003.

Executive Decree Nº 250 (2004)

*Ley de contratos de obras públicas* (Public Works Contract Act), 2005.

*Ley de concesiones de obras públicas* (Public Concessions Contract Act), 2005

Nº 20.285 *Ley sobre transparencia* (Transparency Act), 2006.

# 1. Legislative Framework. International Agreements

WTO Agreement on Government Procurement (GPA): Chile is only observer since 1997.

US-Chile Free Trade Agreement (2004)

EU-Chile Association Agreement (2002)

Korea-Chile Free Trade Agreement (2004)

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

# US-Chile Free Trade Agreement (2004)

## Public Procurement

### Article 9.2: General Principles

#### National Treatment and Non-Discrimination

*1 With respect to any measure governing procurement covered by this Chapter, each Party shall accord to the goods and services of the other Party, and to the suppliers of the other Party of such goods and services, treatment no less favorable than the most favorable treatment the Party accords to its own goods, services, and suppliers.*



## EU-Chile Association Agreement (2002)

Art. 136

*“In accordance with the provisions of this Title, the Parties shall ensure the effective and reciprocal opening of their government procurement markets”.*

## EU-Chile Association Agreement (2002)

Art. 139 National treatment and non-discrimination.

*1. Each Party shall ensure that the procurement of its entities covered by this Title takes place in a transparent, reasonable and non-discriminatory manner, treating any supplier of either Party equally and ensuring the principle of open and effective competition.*

# Korea-Chile Free Trade Agreement (2004)

## Article 15.14: Information Technology and Cooperation

*1. The Parties shall, to the extent possible, endeavour to use electronic means of communication to permit efficient dissemination of information on government procurement, particularly as regards tender opportunities offered by entities, while respecting the principles of transparency and non-discrimination.*

*2. The Parties shall endeavour to provide each other with technical cooperation and assistance through the development of training programs with a view to achieving a better understanding of their respective government procurement systems and statistics, as well as a better access to their respective markets.*

## 2. Entities covered by the regulations

Central Government Authorities: Ministries, Public Services.

Regional and Local authorities: Regional Government and Municipalities.

Decentralized bodies: Public Services, Agencies.

Other entities with private law status, but subject to “public control”.

## Exceptions

Public Enterprises.

Judicial and Legislative Powers.

In some cases they use the public procurement system, as “good practice” .

### 3. Procurement subject to the regulations

Supplies/goods

Services

Works (construction services)

### Exceptions

Defense (national security matters)

Public Employment

Financial services, etc.

# 4. Procurement Process



# Types of Procedures

Procedure	Key Features	Comments / Critics
Public Tender	<ul style="list-style-type: none"><li>- All interested parties may tender.</li></ul>	<ul style="list-style-type: none"><li>- National legislation is inclined to this procedure.</li><li>- previous registration in a supplier registry required.</li></ul>
Private Tender	<ul style="list-style-type: none"><li>- Parties are invited to tender.</li><li>- Contracting Authority (CA) has to justify the use of this procedure.</li><li>- Motives: see next table</li></ul>	<ul style="list-style-type: none"><li>- Not too common, motives also allow a direct negotiation.</li></ul>
Direct Negotiations	<ul style="list-style-type: none"><li>- CA negotiates and contracts directly with the supplier.</li><li>- In some cases CA has to ask for three offers from different suppliers.</li></ul>	<ul style="list-style-type: none"><li>- In some cases is really justified.</li><li>- Sometimes “suspicious”</li></ul>

# Motives for a Private Tender or Direct Negotiation

Motive	Threshold (in Euros)	Remarks
No candidates have applied	-	A resolution is required.
It is necessary to finish correctly a previous contract (which was terminated with the original party)	55,000 (ca.)	A resolution is required.
Urgency, emergency and unexpected situations	-	A resolution is required.
There is only one supplier	-	A resolution is required. Very uncommon situation.
Supplier is a foreigner and contract must be fulfilled abroad	-	A resolution is required.
Confidentiality is required because of defense reasons	-	National security exemption.
Under Threshold	5,500 (ca.)	CA has to ask for three offers.



# Framework Agreements

Before a Procurement Procedure, each CA shall consult the electronic catalogue with the goods and services offered in the Framework Agreements.

FAs are managed centralized by the “Dirección de Compras y Contratación Pública”.

FAs have shown good results in terms of transparency, efficiency and economy.

Está en Inicio >> Convenio Marco



Tienda virtual de Convenios Marco

Ingrese productos, servicios o ID

Buscar



- Productos ▶
- Servicios ▶
- Salud ▶
- Cloud y ▶
- Datacenter

Convenios vigentes

Licitaciones convenio marco

Preguntas frecuentes

## Conoce la Tienda de Convenios Marco



### Ofertas especiales



#### COMPUTADOR HP 1

ID: 953858  
Servicios Computacionales Global S.A.

US\$ 643  
US\$ 225

Ofertas especiales del convenio



#### IMPRESORA LÁSER

ID: 799882  
Comercial Sercodata Ltda

US\$ 293  
US\$ 234

Ofertas especiales del convenio



#### CORCHETERA RAPI

ID: 839619  
COMERCIAL REDOFFICE LIMITADA

\$ 176.466  
\$ 151.500

Ofertas especiales del convenio



#### SOFTWARE MICROS

ID: 858610  
Sumatec Ltda.

US\$ 694  
US\$ 648

Ofertas especiales del convenio

### Informaciones

Más de 100 nuevos proveedores de convenio marco de Emergencia disponibles en catálogo ChileCompra Express.

[Ver más](#)

Se receptionan 203 ofertas para licitación de Convenio Marco de Servicios de Hemodiálisis y Peritoneodiálisis Adulto y Menores de 15 Años e Instalación de Catéter Peritoneal.

[Ver más](#)

ChileCompra llama a participar en licitación de Convenio Marco de Hemodiálisis y Peritoneodiálisis Adulto y Menores de 15 Años e Instalación de Cateter Peritoneal.

[Ver más](#)

ChileCompra llama a postular a nuevo Convenio Marco de Alimentos Perecibles y No Perecibles.

[Ver más](#)

La tienda virtual incorpora a partir del 01 de marzo de 2014, el nuevo CM de Artículos de Aseo, Menaje y Cuidado Personal, ID 2239-7-LP12.

[Ver más](#)

## **Electronic Public Market**

For each contract covered by the Public Procurement regulation, entities shall publish in advance a notice inviting interested suppliers to submit tenders for that contract.

[www.mercadopublico.cl](http://www.mercadopublico.cl)

## Escritorio de Jorge Bermúdez Soto

### Accesos Directos a Aplicaciones



Resumen de Licitaciones y Operaciones



Búsqueda de Licitaciones para Ofertar



Búsqueda y Gestión de Órdenes de Compra



Licitaciones Seguidas



RSS - Notificaciones Mercado Público



Administración



Ver Calificaciones

## 5. Contracts award

Supplies and Services Contract Act, Art. 10.

*“The contract shall be awarded through a well founded resolution by the competent authority, which shall be communicated to the successful offer.*

*The successful offer shall be the one that submits the overall most advantageous proposal, according to the conditions described in the respective bidding specifications and the evaluation criteria set forth in the regulations”.*

**Award Criteria: Most advantageous offer includes:**

- All benefits expected from the goods or services.
- Costs (present and future).
- CA shall not attend only to the lowest price, but all costs and benefits.

## Evaluation Criteria: Technical and Economical

- Lowest price

- Experience

- Methodology

- Technical quality

- Technical assistance or support

- After-sales services

- Compliance with formal requirements of the tender

- and any other relevant criterion according to the characteristics of goods or services tendered and the requirements of the bidding entity.

- Delivery

- Surcharges freight

- Environmental considerations

- Efficiency energy

- Consortia between bidders

- Previous contractual behavior

## Art. 38 Executive Decree

*“Entities shall establish in the Bidding Specifications the criteria, factors and sub-factors and the mechanism for the point allocation for each of them. For the evaluation of factors and sub-factors of each criterion the evaluation committee may draw guidelines specifying how to qualify the factors and sub-factors defined in the bidding”.*

# 5. Problems and Solutions





# Problems

High administrative discretion.

Bidding Specifications are the “key” in the procurement process.

High risk of “tailor made tender”.



## **Solutions: Legal. General obligations for each CA.**

- CA must give all parties equal treatment.
- CA shall provide maximum information to all parties.
- CA shall consider opportune times for all stages of the tender and shall avoid making purely formal requirements.

## Solutions: Administrative Review

All contracts above € 125,000 are subject to a preventive control of legality.

Standard Bidding Specifications simplify administrative review.

## Administrative Review

Administrative (legal) review is conducted by an independent body called Contraloría General de la República (*General Comptroller*).

If the result is negative, the contract can not be awarded.

Comptroller approves Binding Specifications in advance.

# Standard Bidding Specifications (pre-approved)



## Actualidad

- Destacados
- Dictámenes Relevantes
- Últimas Auditorías
- Biblioteca Documental

## Agendas

- Contralor General
- Subcontralor General
- Autoridades CGR

## Buscadores en línea

- Dictámenes
- Boletín Jurisprudencia
- Legislación
- Informes de Auditoría
- Normativa Contable
- Juzgado de Cuentas

## Contabilidad General

- La Contraloría
- Contraloría Regional
- CGR Transparente
- Atención a Usuarios

Usted se encuentra en: [Destacados](#) > [Bases Administrativas aprobadas por la CGR](#)

## BASES ADMINISTRATIVAS TIPO APROBADAS POR LA CGR



### División Jurídica

- Resolución N°92 - MINISTERIO DE EDUCACIÓN**  
23 de abril de 2014
- Resolución N° 116 (con alcance) - FONDO DE SOLIDARIDAD E INVERSIÓN SOCIAL**  
12 de marzo de 2014
- Resolución N° 8 - SERVICIO NACIONAL DE MENORES**  
24 de septiembre de 2013
- Resolución N° 385 - INSTITUTO DE SALUD PÚBLICA**  
24 de septiembre de 2013
- Resolución N° 56 - ONEMI**  
24 de septiembre de 2013
- Resolución N° 443 - CONTRALORÍA GENERAL DE LA REPÚBLICA**  
13 de agosto de 2013
- Resolución N° 490 - MINISTERIO DE EDUCACIÓN**  
23 de julio de 2013
- Resolución N° 06 - SUBSECRETARÍA DE ECONOMÍA Y EMPRESAS DE MENOR TAMAÑO**  
10 de julio de 2013
- Resolución N° 23 - SERVICIO NACIONAL DEL ADULTO MAYOR**  
18 de junio de 2013

## Solutions: Administrative Review (2)

The CA which has broken general obligations or legal control, could be:

- Penalized (fines and criminal sanctions).
- Removed.

(This behavior is considered against probity and integrity)

## Solutions: Judicial Control. Public Procurement Court

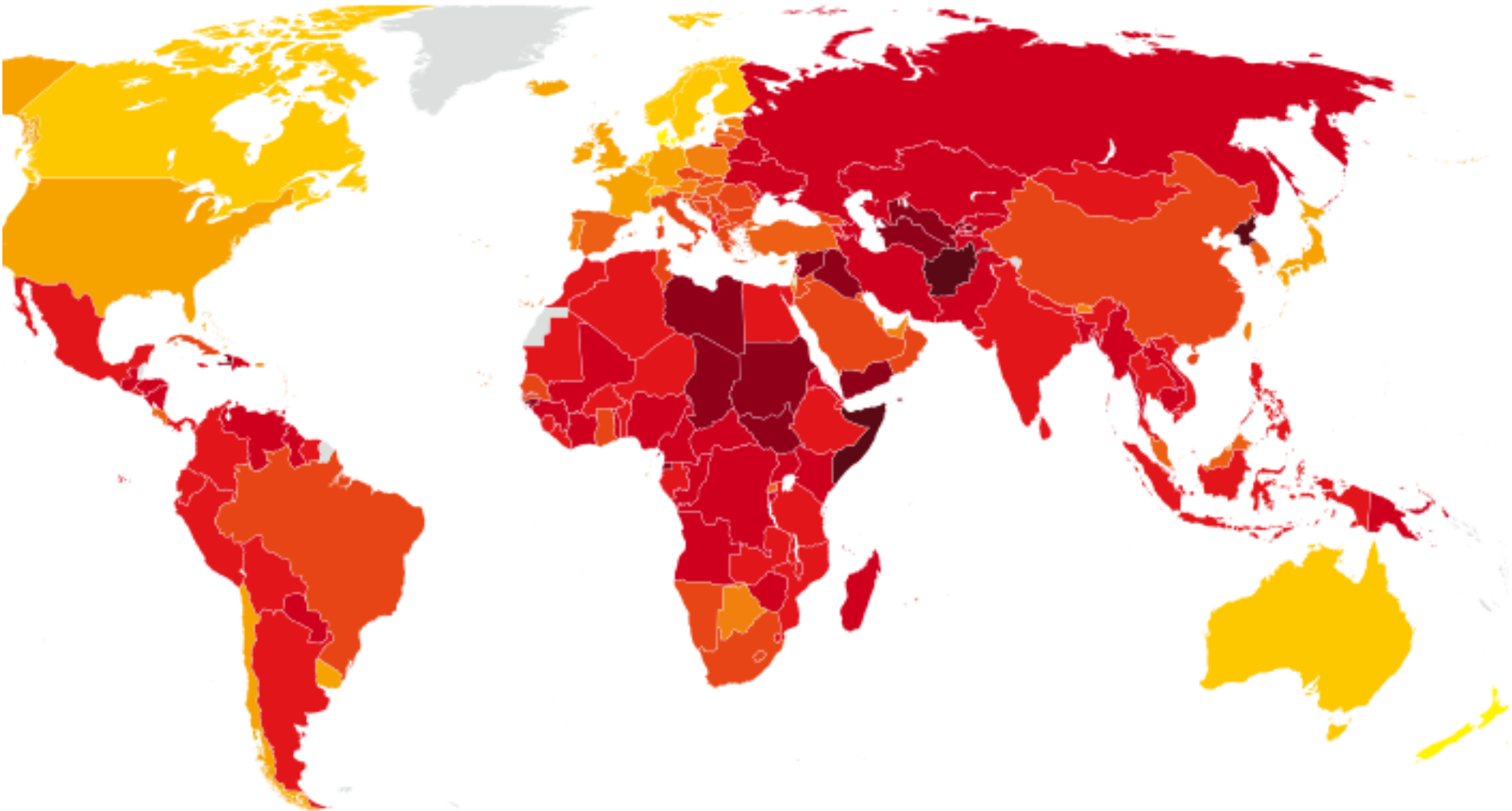
The Court has jurisdiction above illegal or arbitrary acts or omissions occurred during the Tender Procedures.

Including from the approval of Bidding Specifications to the awarding of the contract.

The Court may suspend the tender procedure.

In the decision the Court shall decide if the acts or omissions were legal, and adopts all measures to reestablish the rule of law. (inc. revoke)

# Corruption Perception Index 2013





RANK	COUNTRY/TERRITORY	SCORE			
1	Denmark	91	22	France	71
1	New Zealand	91	22	Saint Lucia	71
3	Finland	89	26	Austria	69
3	Sweden	89	26	United Arab Emirates	69
5	Norway	86	28	Estonia	68
5	Singapore	86	28	Qatar	68
7	Switzerland	85	30	Botswana	64
8	Netherlands	83	31	Bhutan	63
9	Australia	81	31	Cyprus	63
9	Canada	81	33	Portugal	62
11	Luxembourg	80	33	Puerto Rico	62
12	Germany	78	33	Saint Vincent and the Grenadines	62
12	Iceland	78	36	Israel	61
14	United Kingdom	76	36	Taiwan	61
15	Barbados	75	38	Brunei	60
15	Belgium	75	38	Poland	60
15	Hong Kong	75	40	Spain	59
18	Japan	74	41	Cape Verde	58
19	United States	73	41	Dominica	58
19	Uruguay	73	43	Lithuania	57
21	Ireland	72	43	Slovenia	57
22	Bahamas	71	45	Malta	56
22	Chile	71	46	Korea (South)	55



## 7. Perspectives

1. Greening the tender procedures.
2. Use of other procedures: more complex but efficient procedures, like competitive dialogue.
3. Improve the transparency in information of events that occur after the contract award.  
Example: modifications of the contract.
4. Competition aspect of Procurement Procedures.  
Till now the focus was in transparency and avoiding corruption.
5. CAs are small and the staff charged with the Procurement Procedures is sometimes poorly qualified. (Huge efforts in qualification).

# Thank you for your attention!

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