

**Trade Policy Review Body**

**TRADE POLICY REVIEW**

**Report by the Secretariat**

**CHILE**

This report, prepared for the fourth Trade Policy Review of Chile, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from Chile on its trade policies and practices.

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Document WT/TPR/G/220 contains the policy statement submitted by Chile.

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Note: This report is subject to restricted circulation and press embargo until the end of the first session of the meeting of the Trade Policy Review Body on Chile.

concessions for the production and distribution of drinking water and the collection and disposal of waste water were put out to tender for a period of 30 years, and there are six regional sanitary companies. The income earned from privatization was over 17.5 million UF (approximately US\$628 million).

**(v) Government procurement**

✓ 232. Chile has significantly reformed its regime for government procurement of goods and services since 2003 in order to make it more transparent and efficient, *inter alia*, through the use of an electronic procurement platform. The reforms were envisaged as practical improvements and they have expanded participation by suppliers and buyers in the government procurement market. There is no discrimination whatsoever as regards products, services and suppliers according to their origin. ✓ Purchasing by State-owned enterprises and for public works is governed by the respective regulations.

✓ 233. Procurement by the Chilean Government (excluding State-owned enterprises and concessions) amounted to US\$5.045 billion (corresponding to 2.9 per cent of GDP) in 2008. Over 900 purchasing agencies among the central and local administrative authorities are on ChileCompra's electronic bidding platform and some 1,600,000 contracts are handled annually.<sup>164</sup>

✓ 234. Chile did not sign the WTO plurilateral Agreement on Government Procurement, but is an observer in the corresponding committee. The Chilean authorities have indicated that, for the time being, they have no plans to negotiate accession to this Agreement, but they have expressed an interest in following the drafting of the new text. Chile has accepted commitments on government procurement under the RTAs it has signed. By mid-2009, there were government procurement sections in 11 agreements signed by Chile (with Central America, the European Community, the United States of America, the Republic of Korea, EFTA, the P-4, Canada, Japan, Australia, Colombia and Mexico). Moreover, in January 2009, Chile signed an agreement on government procurement with Uruguay within the LAIA framework and this is expected to come into effect during the last quarter of 2009.

235. As part of the State's wide-ranging modernization plans, in 2003 Chile started to reform its government procurement regime. One pivotal element of this reform was the enactment of the Procurement Law (Law No. 19.886), which came into force in August 2003 with the aim of grouping together the procedures for government procurement of goods and services. According to the 2008-2010 Strategic Plan, the objectives of Chile's government procurement policy are to ensure a transparent, efficient and inclusive government market and to generate innovation for its sustainability.<sup>165</sup>

236. A World Bank study found that Chile's government procurement regime is considered generally free of corruption, given the probity of the public servants, decentralization and good budgetary and control systems. As regards the 2003 reforms, the study found that their conceptual approach and design could be considered as best practice and, although implementation was still under way, there were already positive results, particularly as regards disclosure of information, participation by buyers and sellers, and procurement based on framework agreements (see below).<sup>166</sup> Nevertheless, some aspects of public works procurement could be improved (see below).

<sup>164</sup> ChileCompra, 2008-2010 Strategic Plan.

<sup>165</sup> The Strategic Plan may be viewed at: <http://www.chilecompra.cl>

<sup>166</sup> World Bank (2004).

(a) Procurement of goods and services

✓ 237. The Basic Law on Administrative Contracts for the Supply and Rendering of Services (No. 19.886) of 30 July 2003<sup>167</sup> and its implementing Regulations (Ministry of Finance DS No. 250 of September 2004)<sup>168</sup> lay down the legal framework for government procurement of goods and services by all Central Government departments, regional and provincial governments, municipal authorities, the armed forces, the Central Bank and the Comptroller General of the Republic. The Law does not apply to State-owned enterprises, which follow their own regulations. In the case of public works, Law No. 19.886 applies to the mandatory use of the electronic information system for procurement and the *Tribunal de Contratación Pública* (Government Procurement Tribunal) (see below), and on a general supplementary basis.<sup>169</sup>

✓ 238. The main reforms introduced by Law No. 19.886 include the creation of the *Dirección de Compras y Contratación Pública* - DCCP (Directorate of Purchasing and Government Procurement) of the Ministry of Finance, which is responsible for implementing the relevant government policy, as well as the creation of an electronic information system for purchasing and government procurement (ChileCompra)<sup>170</sup>, through which all entities covered by Law No. 19.886 must quote prices, invite bids, source contractors, award contracts and carry out procurement procedures for goods, services and public works (even though the latter are not subject to the law). This electronic procurement information system is open to the public and free of charge and is managed by the DCCP. Law No. 19.886 also set up the *Registro Nacional de Proveedores de la Administración Pública* (National Register of Public Administration Suppliers)<sup>171</sup> and the Government Procurement Tribunal.<sup>172</sup>

239. Law No. 19.886 provides for four types of government procurement, namely, framework agreements, public bidding, private bidding and direct negotiation or contracting. Framework agreements allow the purchase of a wide variety of goods and services by various entities to be grouped together for greater efficiency and lower prices. Under such agreements, awarded following a public bidding procedure, the DCCP agrees unit prices with suppliers of the goods and services in question, which government agencies then purchase simply through purchase orders in accordance with the terms laid down in the framework agreements.

✓ 240. Pursuant to Law No. 19.886 (Article 5), public bidding procedures are the general rule and are mandatory if the contracts exceed 1,000 UTM (around US\$70,000), except in the circumstances covered by the Law. Nevertheless, according to the implementing Regulations for the Law, a public bidding procedure is required for procurement of goods and services exceeding 100 UTM (approximately US\$7,000).<sup>173</sup> Private bidding procedures and direct contracting are rare; they must be based on a substantiated resolution and are only allowed in the circumstances defined in the Law.<sup>174</sup> Breaking up contracts for the sole purpose of avoiding the public bidding procedure is

<sup>167</sup> Laws No. 20.088 of 2006 and No. 20.238 of 2008 introduced minor changes to Law No. 19.886, particularly to Article 4 thereof, concerning cases of disqualification from procurement.

<sup>168</sup> Amended by Decree No. 1562 of the Ministry of Finance, published on 20 April 2006, and by Decree No. 260 of 13 July 2007.

<sup>169</sup> Law No. 19.886 and its implementing Regulations may be viewed at: [http://chilecompra.cl/normativa\\_legal.htm](http://chilecompra.cl/normativa_legal.htm)

<sup>170</sup> The ChileCompra website is: [www.chilecompra.cl](http://www.chilecompra.cl)

<sup>171</sup> The Register of Suppliers (ChileProveedores) website is: [www.chileproveedores.cl](http://www.chileproveedores.cl)

<sup>172</sup> The Tribunal's website is: [www.tribunaldecompras.cl](http://www.tribunaldecompras.cl)

<sup>173</sup> Article 10, paragraph 8, of the implementing Regulations for Law No. 19.886 (DS 250/2004).

<sup>174</sup> Article 8 of Law No. 19.886 and Article 10 of its implementing Regulations.

prohibited. The authorities have indicated that 91 per cent of procurement is through a public bidding procedure.

241. All procurement, that is to say, public or private bidding procedures, direct negotiation or contracting and framework agreements must use the ChileCompra electronic information system. Without prejudice to the foregoing, for public bidding procedures, the call for bids may also be published in other international, national or regional media.

242. Law No. 19.886 lays down minimum time limits between the call for bids and the closing date for receipt. If the amount of a contract is 1,000 UTM or more, the call must be published at least 20 calendar days prior to the cut-off date for receiving bids; for lesser amounts, the minimum period is ten days. For direct contracting, the minimum period between publication of the price quotation and receipt of bids is five days. All these time-limits may be decreased if only single goods or services are to be procured.

✓ 243. The National Register of Public Administration Suppliers, kept by the DCCP, is an electronic register in which Chilean or foreign natural or legal persons not domiciled in Chile may be registered. Listing in the Register attests to the legality and financial and technical capacity of the suppliers, but is not an essential requirement in order to take part in procurement. Entities may decide for themselves whether or not to require that bidders should be listed in the National Register at the time of contracting. The Register is open to the public and available on the website of ChileCompra, as well as on that of ChileProveedores. An application for listing in the Register may be made at any time. According to information provided by the authorities, in April 2009 there were around 32,000 suppliers listed in the Register, of which 57 per cent were from the metropolitan region and 43 per cent from other regions.

244. Pursuant to the implementing Regulations for Law No. 19.886, entities must establish the criteria for evaluating bids, taking into account, *inter alia*, the price of the bid, the experience of the bidders, the technical quality of the goods or services offered, technical assistance, after-sales service and the delivery date. The criteria must also be specified in advance in the tender specifications, showing the scores assigned to each of them.<sup>175</sup> The technical specifications for the goods or services to be procured must be generic and must not refer to any specific brands.

245. The bids are opened electronically through the information system. The contract is awarded to the bid that provides the most advantageous combination of the criteria laid down in the specifications and takes the form of an administrative act duly notified to the winning bidder and the other bidders. This act sets out the evaluation criteria and shows the points scored that resulted in the winner being declared as having made the most competitive bid. The administrative act awarding a contract or declaring the procurement procedure null and void must be published in such a way that all suppliers can see for themselves the results of the bidding procedure.<sup>176</sup> The contract may not be awarded to a bid that does not meet the criteria and requirements laid down in the tender specifications.

✓ 246. There is no provision in the legislation for margins of preference for national suppliers and no discrimination among products, services and suppliers according to their origin. Nor is there any provision for offsets as a condition for awarding a contract.

<sup>175</sup> Article 38 of the implementing Regulations for Law No. 19.886.

<sup>176</sup> Articles 6 and 41 of the implementing Regulations and Articles 18 *et seq.* of Law No. 19.886.

247. Under Law No. 19.886, in September 2005 the Government Procurement Tribunal was set up as a specialized and independent jurisdictional body of the State Administration. The Tribunal is empowered to hear and decide on action taken to challenge any illegal or arbitrary act or omission that may have occurred between the approval of the tender specifications and the award of the contract in procurement procedures by government entities, including those concerning public works. Any natural or legal person having a proven interest in a procurement procedure may submit an application to the Tribunal challenging the award within ten working days from the time when the contested act or omission became known or after its publication.

248. After the Tribunal has agreed to hear the challenge, it may decree the suspension of the bidding procedure to which the challenge relates. In a definitive ruling, the Tribunal decides on the legality or arbitrariness of the act or omission challenged and orders the measures needed to restore the rule of law. An appeal may be made against the Tribunal's rulings to the Appeal Court in Santiago. In December 2008, 334 applications had been submitted to the Tribunal since its creation, of which 211 had been finalized and 123 were being processed; on the same date, the Tribunal had issued 72 rulings.<sup>177</sup>

(b) Procurement of public works

249. There is no unified regulatory framework for public works and the procurement procedures are governed by the individual organic laws pertaining to government and municipal authorities. Nevertheless, the regulations of the Ministry of Public Works (MOP) establish the guidelines followed by other entities.

250. The MOP is responsible for public infrastructure works; its organic law (DFL No. 850 of 1997) and the Regulations on Public Works Contracts (Supreme Decree No. 75 of 2004, amended by Decree No. 810 of 2008) lay down the rules to be followed for such contracts. There is also a Law on Public Works Concessions (Supreme Decree No. 900 of 1996 of the MOP) and its implementing Regulations (DS No. 856 of 1997).<sup>178</sup> Works contracts concluded by the Ministry of Housing and Urban Planning for its own purposes and contracts for carrying out, operating and maintaining urban works with third party involvement are governed by Supreme Decree No. 236, which lays down the general basic regulations for procurement of works for housing and urban services, Law No. 19.537 on co-ownership of property, and Law No. 19.865 on shared urban financing.

251. A World Bank study in 2004 found that the MOP's bid evaluation and contract award procedures were generally open and transparent, although there was room for improvement in areas such as a unified register of contractors, the submission of bids and appeal mechanisms.<sup>179</sup> In January 2005, new MOP regulations on public works contracts came into force<sup>180</sup>, introducing changes aimed *inter alia* at improving transparency, simplifying and streamlining the management of public works contracts, making the register of contractors more efficient and specifying the channels for appeals. In December 2008, amendments to the Regulations, consisting of administrative facilities, were approved so as to make it easier for SMEs to obtain access to public works contracts.

<sup>177</sup> Information viewed at: <http://www.tribunaldecompras.cl>

<sup>178</sup> The MOP's rules may be viewed at: [http://www.mop.cl/mop\\_marco\\_legal.htm](http://www.mop.cl/mop_marco_legal.htm).

<sup>179</sup> World Bank (2004).

<sup>180</sup> MOP Supreme Decree No. 75 of 2004, which replaced the former Decree dating from 1992 (DS No. 15).