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Chile- Public Procurement

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Chile- Public Procurement

1. What is the current legal landscape for your practice area in your jurisdiction?

The public procurement landscape in Chile is undergoing its most profound transformation in two decades. The system, anchored in Law No. 19,886 (the Public Procurement Law), has evolved from a model that no longer met current public needs into a strategic one. This shift is driven by the recent enactment of Law No. 21,634, which introduces substantive amendments to the Public Procurement Law, alongside its new regulations contained in Decree No. 661 of 2024.

The Chilean public procurement regime is structured upon reinforced guiding principles that predate the latest amendments, such as the principle of strict adherence to the bidding terms (*estricta sujeción a las bases*) and equal treatment of bidders. However, new principles have been incorporated, such as the concept of "Value for Money." This mandates to consider not only the price but also efficiency, effectiveness, and the product's life cycle, including sustainability and innovation criteria.

The regulatory ecosystem is defined by three critical elements:

- **Robust Institutional Framework:** The Directorate for Public Procurement and Contracting (*Dirección de Compras y Contratación Pública* or "ChileCompra") administers the mandatory electronic transactional platform (*Mercado Público*). Meanwhile, the Public Procurement Tribunal (*Tribunal de Contratación Pública*) exercises specialized jurisdictional control over illegal or arbitrary acts, with the latest amendments expanding its jurisdiction to the contract execution stages.
- **Differentiated Procedures:** While Public Bidding remains the general rule, the new regulations have refined mechanisms such as Agile Procurement (*Compra Ágil*—for amounts under 100 UTM – USD 7,900 approx.) and introduced innovative procedures like Competitive Innovation Dialogues and Innovation Contracts. These mechanisms are designed to deliver complex solutions where the State does not possess the technical solution a priori.
- **Strict Oversight:** The Comptroller General of the Republic (*Contraloría General de la República*) maintains rigorous oversight of governmental agencies and bodies, particularly regarding the use of Direct Contracting. This mechanism is interpreted restrictively as an exceptional measure requiring solid factual justification, not merely formal compliance.

2. What three essential pieces of advice would you give to clients involved in your practice area matters?

I. Unwavering Adherence to the Principle of Strict Subjection to Bidding Terms. In Chile, the bidding terms and conditions act as the "law of the contract" and govern the awarding procedure. Failure to comply with requirements, even those appearing to be mere formalities, can lead to the inadmissibility of the proposal or the invalidation of the award. We advise clients to perform an exhaustive compliance checklist before submitting a bid, never assuming the Administration will tolerate minor technical or administrative deviations.

II. Strategic and Well-Grounded Management of Direct Contracting. If your commercial strategy relies on

Direct Contracting (without a public bid), you must “armor” the justification, confirming the reasoning used by the purchasing entity. Invoking grounds such as “sole supplier” or “trust and security” may be insufficient; they must be proven by the contracting agency. A poorly justified direct contract is an open invitation for challenges by competitors.

III. Immediate Action Regarding Irregularities (The 10-Day Rule). The Chilean system rewards active vigilance and peer oversight among competitors. The Public Procurement Tribunal's jurisdiction to annul illegal or arbitrary acts is subject to a strict deadline (plazo fatal) of 10 business days from the moment the act becomes known (usually upon its publication on the Mercado Público web page). We advise monitoring the Mercado Público site daily and preparing a strategy for rapid response and potential challenges, whether through the administrative remedies refined by the modernization of the Public Procurement Law or through legal challenges before the Public Procurement Tribunal.

3. What are the greatest threats and opportunities in your practice area law in the next 12 months?

Threat: Uncertainty in Regulatory Transition. The gradual implementation of Law No. 21,634 and the entry into force of the new regulations create a zone of interpretative risk. New probity standards, which require identifying the Ultimate Beneficial Owners (UBOs) of companies and expand the grounds for disqualification (including relatives of officials and related companies), could exclude historical suppliers who fail to update their corporate compliance structures.

Opportunities: The Innovation Market. The reform opens an unprecedented window for technology and specialized service companies through the new Innovation Contracts. For the first time, the State has a rule empowering it to acquire innovative and sustainable solutions, allowing for co-creation and piloting processes before mass purchasing. This breaks the entry barrier posed by rigid traditional tenders, favoring suppliers who offer value-added solutions beyond the lowest price.

4. How do you ensure high client satisfaction levels are maintained by your practice?

In a regulatory environment characterized by short deadlines and high technical complexity, client satisfaction is ensured through strategic anticipation and multidisciplinary integration.

Our practice is not limited to the legal review of bidding terms; we integrate our legal teams with the client's technical teams from the opening stage of procurement procedures. This allows us to leverage the Q&A stage, detecting ambiguous or illegal clauses and requesting clarifications to clear risks before bidding.

Furthermore, we keep our knowledge permanently updated regarding the rulings of the Comptroller General and the judgments of the Public Procurement Tribunal. This enables us to advise based on the authority's current criteria, avoiding costly and futile litigation. When litigation is inevitable, our capacity for immediate response—essential given the 10-day deadline to challenge—guarantees that the client's rights are defended in a timely manner, protecting their market share against arbitrary awards.

5. What technological advancements are reshaping your practice area law and how can clients benefit from them?

Technology has ceased to be merely support; it has become the ecosystem itself of public procurement in Chile.

- **Radical Transparency and Big Data:** The platform www.mercadopublico.cl centralizes all interaction. The key advancement is the interoperability of State data. Today, the system automatically cross-references tax, social security, and property information of companies. This allows our clients to perform real-time due diligence on competitors, detecting if a rival awardee has outstanding social security debts or undeclared conflicts of interest, which constitutes a solid basis for legal challenges.
- **Agile Procurement and Automation:** The expansion of the Agile Procurement (Compra Ágil) module for minor acquisitions (up to 100 UTM) has energized the market. For clients, this means the possibility of closing business with the State in a matter of days, not months, provided they have automated systems to detect and respond to these volatile opportunities.
- **Digital Declaration of Interests and Assets:** The mandatory nature of these declarations and their electronic cross-referencing raises the standard of probity. We advise clients on the use of these digital tools to safeguard their own position and to audit the integrity of the processes in which they participate.

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