

Assessing Public Procurement Practice in Costa Rica - 2017

1. General Description of the Public Procurement System

1. Management of the Public Procurement System ¹

Please provide a brief description of how the public procurement system is managed in your country by answering the following questions:

Is there a single state body responsible for managing the public procurement system, or is this function distributed among more than one state body? What is its/their authority and responsibilities and are legal requirements met in practice in this regard? What is the level of independence of this body/ies and are legal requirements met in practice? Is there duplication of authority?

Please provide the answer in a maximum of 5-10 sentences.

Comment: There's not a single body responsible for managing the public procurement system. Costa Rica functions under the principle of normative centralization and operative deconcentration, so the management of procurement procedures is carried out by each Institutional Provider, which are the dependencies that conduct all procurement procedures of interest for the respective institution. These Institutional Providers are not independent. For its part, the Comptroller General's Office, which has functional and administrative independence, has the role of auditing and inspecting the public procurement processes. The General Directorate of Asset Management and Administrative Contracting, on the other hand, is the governing body of the Asset Management and Administrative Contracting System, but its power only applies to the Central Administration (the Executive Power) and its tasks mainly consist of advisory and the issuing of guidelines. This General Directorate is part of the Ministry of the Treasury. As far as can be assessed, each of these institutions meet their legal requirements, nevertheless, on occasions an overlap in authority can be detected, especially when the Comptroller General's Office decides issues that instead should've been part of the governing competences of the General Directorate of Asset Management and Administrative Contracting.

Source: Administrative Contracting Law N° 7494, art. 3 and 106. Law of the Financial Administration of the Republic and Public Budgets N° 8131, art. 99. Information request to the General Directorate of Asset Management and Administrative Contracting.

2. Are tenders electronic or paper based? In cases when tenders are solely electronic, are there cases of paper-based tendering? Is there insufficient enforcement of PPL?

Please provide the answer in a maximum of 3-4 sentences.

Comment: Article 40 of the Administrative Contracting Law points out that all procurement activities must be conducted through electronic means. Currently, more than 220 of the 305 public institutions

¹ Special thanks for their insight and observations to the members of our advisory committee: Alejandro Calvo Castillo, Christian Campos Monge, and Fabián Quirós Álvarez.

that are mandated by law to use the Integrated System of Public Procurement (SICOP) are already using it, nevertheless, this does not mean that they're using it for the totality of their contracting procedures, and there's still important public entities, such as the Judicial Branch, that prefer to use their own procurement systems. Also, it's necessary to mention that article 11 of the Regulation to the Administrative Contracting Law allows institutions, on exceptional and reasoned cases, to conduct their procurement procedures through physical means (paper, in other words). There's no clarity on what constitutes an exceptional case nor is there aggregated data about the number of these cases. The Comptroller General's Office has mentioned the necessity of eliminating these exceptions.

Source: Administrative Contracting Law N° 7494, art. 40. Regulation to the Administrative Contracting Law N° 33411, art. 11. Report N° DFOE- SAF-IF-00014-2017 from the Comptroller General's Office. Information request to the General Directorate of Asset Management and Administrative Contracting.

3. Is public procurement conducted through a centralized, single website or are there multiple websites for conducting public procurement? Is its/their use mandatory or voluntary?

Please provide the answer in a maximum of 3-4 sentences.

Comment: Article 40 of the Administrative Contracting Law points out that all public procurement procedures must be conducted through a single unified digital system, known since 2015 as the Integrated System of Public Procurement (SICOP). Nevertheless, even though its use is mandatory, at the moment of answering this question approximately only 70% of public sector institutions use SICOP to conduct their procurement procedures. An audit done by the Comptroller General's Office detected that, in the period between January and August of 2017, 82% of public sector institutions still carried out procurement procedures through other means or platforms.

Source: Administrative Contracting Law N° 7494, art. 40. Report N° DFOE- SAF-IF-00014-2017 from the Comptroller General's Office. Information request to the General Directorate of Asset Management and Administrative Contracting.

4. If there is a register of suppliers, what is the number of registered suppliers in it?

If possible, please provide a comparison with several (at least 5) previous years?

Comment: There's a Unique Register of Suppliers (Registro Único de Proveedores), to which all suppliers must register if they want to use SICOP (this means that it doesn't necessarily include all the suppliers of institutions that still don't use SICOP). As of October 31st of 2018, there were a total of 21.471 physical and legal entities registered in the Unique Register of Suppliers. Provided below is the data available of the accumulated number of registered suppliers for the past five years:

Accumulated number of registered suppliers in the Unique Register of Suppliers (evolution by year for the period 2014-2018)

Year	Accumulated number of registered suppliers
2014	9.236
2015	11.261

2016	14.110
2017 (as of April 30)	17.321
2018 (as of October 31)	21.471

Source: SICOP's Management Reports

5. What is the total number of competitive procedures?

If possible, please provide a comparison with several (at least 5) previous years.

Comment: There is no single aggregated data available for the total number of competitive procedures fulfilled through all the different means and platforms. Using the available statistics, a very rough approximation of the number of competitive procedures carried out in each of the last six years would be as follows:

Number of competitive procedures by year (2013-2018)

Year	Number of competitive procedures
2013	14.127
2014	12.608
2015	11.887
2016	11.498
2017	12.366
2018	11.204

Source: Sistema Integrado de la Actividad Contractual, CGR, 2019. Last update: January 1st, 2019.

Note: These numbers include only the procedures carried out under the framework of the Administrative Contracting Law and exclude all Direct Contracting procedures, even though these procedures are not necessarily non-competitive.

6. What is the share of public procurement in the country's GDP?

Comment: Up-to-date data was not available for 2018 but, according to the Comptroller General's yearly reports, this was the share of public procurement in Costa Rica's GDP for the previous five years:

Share of public procurement in Costa Rica's GDP by year (2013-2017)

Year	Share of public procurement in Costa Rica's GDP
2013	14,4%
2014	14,9%
2015	12,8%
2016	13,1%
2017	12,9%

Source: Comptroller General's yearly reports.

7. What are the monetary thresholds for single source procurement (works, goods, services)? _____

Is the monetary threshold acceptable? Why or why not?

Comment: The monetary thresholds for direct contracting vary according to the amount of the yearly budget for procurement that the Comptroller General's Office approves for each institution.

For institutions with an approved budget for procurement superior to ₡50.700.000.000,00, the monetary threshold for direct contracting is below ₡42.300.000,00.

For institutions with an approved budget for procurement equal or inferior to ₡50.700.000.000,00 but superior to ₡33.800.000.000,00, the monetary threshold for direct contracting is below ₡13.120.000,00.

For institutions with an approved budget for procurement equal or inferior to ₡33.800.000.000,00 but superior to ₡16.900.000.000,00, the monetary threshold for direct contracting is below ₡11.810.000,00.

For institutions with an approved budget for procurement equal or inferior to ₡16.900.000.000,00 but superior to ₡8.450.000.000,00, the monetary threshold for direct contracting is below ₡10.500.000,00.

For institutions with an approved budget for procurement equal or inferior to ₡8.450.000.000,00 but superior to ₡1.690.000.000,00, the monetary threshold for direct contracting is below ₡9.180.000,00.

For institutions with an approved budget for procurement equal or inferior to ₡1.690.000.000,00, but superior to ₡845.000.000,00, the monetary threshold for direct contracting is below ₡7.870.000,00.

For institutions with an approved budget for procurement equal or inferior to ₡845.000.000,00 but superior to ₡507.000.000,00, the monetary threshold for direct contracting is below ₡6.560.000,00.

For institutions with an approved budget for procurement equal or inferior to ₡507.000.000,00 but superior to ₡169.000.000,00, the monetary threshold for direct contracting is below ₡3.940.000,00.

For institutions with an approved budget for procurement equal or inferior to €169.000.000,00 but superior to €50.700.000,00, the monetary threshold for direct contracting is below €2.620.000,00.

For institutions with an approved budget for procurement equal or inferior to €50.700.000,00, the monetary threshold for direct contracting is below €1.300.000,00.

The Comptroller General's Office is the organ responsible for updating these thresholds annually using technical criteria. It should be noted that different actors, including the OECD, have warned that these thresholds should be defined by absolute amounts and not by percentages of the institutional budgets; in other words, there should only exist a single set of thresholds, without taking into account the size of the approved budget of each contracting entity.

Source: Administrative Contracting Law N° 7494, art. 27. Information request to the General Directorate of Asset Management and Administrative Contracting.

Note: These monetary thresholds apply for what in Costa Rica is called Direct Contracting (procurement procedures which are abbreviated, where at least three suppliers must be invited to participate and which are completely managed by each Institutional Provider without supervision from the Comptroller General), but these procedures are not necessarily non-competitive. According to the legislation, single-source procurement as such is only carried out in specific and exceptional cases such as when there's only one potential supplier that offers the service or product that's being sought.

2. Public Procurement Scope and Spending Breakdown

8. What share (% in terms of procurement value) of government spending is conducted through competitive public procurement procedures? ____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There is no data readily available for the total share of government spending that's conducted through competitive public procurement procedures. There is data, however, about the share of procurement spending so, using the available statistics, a very rough approximation of the share of procurement spending carried out through competitive procedures in each of the last six years would be as follows:

Share of procurement spending conducted through competitive procedures by year (2013-2018)

Year	Share of procurement spending conducted through competitive procedures
2013	39,45%
2014	35,52%

2015	40,89%
2016	51,2%
2017	52,06%
2018	52,63%

Source: Sistema Integrado de la Actividad Contractual, CGR, 2019. Last updated: January 1st, 2019

Note: These numbers include only the procedures carried out under the framework of the Administrative Contracting Law and exclude all Direct Contracting procedures, even though these procedures are not necessarily non-competitive.

9. What share (% in terms of procurement value) of total public procurement spending is conducted through single source procurement?

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by the list of legal exemptions considered acceptable or unnecessary by the TPPR Methodology (Pre-tendering phase, Indicator 9).

Comment: The share of total public procurement spending conducted through direct contracting for the last six years is detailed in the following table:

Share of total public procurement spending conducted through direct contracting by year (2013-2018)

Year	Share of total public procurement spending conducted through direct contracting
2013	49,79%
2014	34,04%
2015	29,20%
2016	35,84%
2017	50,85%
2018	39,39%

Source: Sistema Integrado de la Actividad Contractual, CGR, 2019. Last updated: January 1st, 2019.

Note: These percentages include only the procedures carried out under the framework of the Administrative Contracting Law and that correspond to the category of Direct Contracting procedures, even though these procedures are not necessarily non-competitive. These Direct Contracting procedures must convene at least 3 potential bidders and, when carried out through SICOP, the system automatically sends an invitation to participate to all the suppliers registered.

10. What is the share (% in terms of procurement value) of below threshold single source procurement in total public procurement spending? ____

Please provide an analysis of this data point in 2-3 sentences (if possible, provide data from previous 5 years).

Comment: There is no single aggregated data available for the share of below threshold direct contracting in total public procurement spending. Using the available statistics, though, a very rough approximation for each of the last six years would be as follows:

Share of below threshold direct contracting by year (2013-2018)

Year	Share of below threshold direct contracting
2013	19,57%
2014	18,93%
2015	20,65%
2016	17,34%
2017	20,13%
2018	17,64%

Source: Sistema Integrado de la Actividad Contractual, CGR, 2019. Last updated: January 1st, 2019.

Note: These percentages were calculated using the data corresponding to the amount of money awarded in small-scale direct contracting procedures (contratación directa de escasa cuantía), as regulated in article 27 of the Administrative Contracting Law N° 7494. These procedures are not necessarily non-competitive.

11. If your country has any unreasonable exemptions to the Public Procurement Legislation (e.g. contingency funds, utilities, certain procuring entities or sectors of the economy), provide your estimate of the volume spent in this way and the share (% in terms of value) these exemptions would constitute in total procurement spending? Volume : ____ share: ____

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: According to article 1 of the Administrative Contracting Law, all the institutions of the public sector should be covered under said law, nevertheless, some public enterprises, like the National Insurance Institute and the Costa Rican Electricity Institute, have their own regulations. There's also trusts and other legal figures that procure following their own rules, which enhances the perception that in practice the Law does not apply to all public institutions. It's not possible to aggregate all the data from these different exemptions so as to estimate their volume or share. Using the available (but incomplete) data, below is an estimate for the volume and the share in total procurement spending corresponding to those procedures carried out under a different legal framework:

Volume and share in total procurement spending of procedures carried out under different legal frameworks by year (2013-2018)

Year	Volume	Share
2013	€14.133.941.927	1,59%
2014	€6.715.179.599	0,75%
2015	€7.119.636.203	0,80%
2016	€9.035.281.885	1,01%
2017	€28.346.863.480	3,18%
2018	€29.443.796.514	3,30%

Source: Sistema Integrado de la Actividad Contractual, CGR, 2019. Last updated: January 1st, 2019.

Regarding this type of procedures which are carried out under different legal frameworks, it must be pointed out that, to ensure legal certainty and to avoid normative dispersion, these exceptions should be diminished or moderated; ideally most of these institutions and procedures should be covered completely under a single instrument (the Administrative Contracting Law, in this case).

Note: These percentages were calculated using the data corresponding to the amount of money awarded in procedures initiated by institutions that have their own regulation independent from the Administrative Contracting, as it appeared in the Sistema Integrado de la Actividad Contractual.

12. What is the volume of secret government procurement? What is the share (value in %) of secret government procurement in total public procurement expenditures? Volume: €2.447.646.603 share: 0,19%

Please provide a brief analysis of this data point. If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: After consulting with different institutions, we found no reference that such a thing as secret government procurement exists in Costa Rica. This type of procurement is usually related to military and defense spending; in Costa Rica, since there's no army, this type of spending doesn't exist. Nevertheless, according to the legislation, In the cases in which a procurement process deals with classified or confidential information, then the procedure may be carried out through direct contracting. The volume and the share of this type of procedures for the last six years is detailed in the following table:

Volume and share in total procurement spending of direct contracting procedures by qualified securities by year (2013-2018)

Year	Volume	Share
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2013	€4.499.962.088	0,39%
2014	€2.844.657.564	0,32%
2015	€4.580.177.614	0,51%
2016	€4.564.647.408	0,38%
2017	€3.298.676.959	0,23%
2018	€2.447.646.603	0,19%

Source: Sistema Integrado de la Actividad Contractual, CGR, 2019. Last updated: January 1st, 2019.

Note: These percentages were calculated using the data corresponding to the amount of money awarded in direct contracting by qualified securities (contratación directa por seguridades calificadas), as regulated in article 2 subsection d) of the Administrative Contracting Law N° 7494 and article 139 clause h) of the Regulation to the Administrative Contracting Law N° 33411.

3. Competitiveness

13. What is the average number of bidders? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by goods, works and services.

Comment: There is no data available for the average number of bidders for all the different means and platforms through which public procurement procedures are still carried out but, according to the data provided by SICOP, the average number of bidders for procedures fulfilled through the unified digital system is 3,5. The data for this average is not broken down by years, only the accumulated average of bids received since July, 2010 is available.

According to reports periodically published by SICOP, this accumulated average has slightly fallen down since 2014: from an average of 4 bidders in December of that year to the current average of 3,5 as of October 31st, 2018. In this sense, the most interesting data that can be parsed out from the reports is regarding the average number of bidders for direct contracting procedures (the most common type of procurement procedure executed in Costa Rica), which has fallen from an accumulated average of 5 bidders in 2014 to an accumulated average of 3 in 2018. The reasons for this drop are not clear.

Source: SICOP's Management Reports. Information request to the General Directorate of Asset Management and Administrative Contracting.

14. What is the share (% in terms of procurement value) of competitive procedures with single bidders in total competitive spending? ____

If possible, please provide information on the share (number) of competitive contracts won by single bidders in the total number of competitive procedures.

Comment: There's no data readily available regarding the share of competitive procedures with single bidders in total competitive spending.

15. What is the share (% in terms of procurement value) of competitive procedures with five or more bidders in total competitive spending? ____

If possible, please provide information on the share (number) of competitive contracts with three or more bidders in the total number of competitive procedures.

Comment: There's no data readily available regarding the share of competitive procedures with five or more bidders in total competitive spending.

16. What share (% in terms of procurement value) of public procurement contracts is won by commercial state-owned enterprises (above 50% ownership)? ____

Provide an analysis of this data point. If applicable, provide a comparison with several previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. Is there any reason to believe that state owned companies are getting preferential treatment?

Comment: There is no data available for the share of public procurement contracts that are won by commercial state-owned enterprises. Nevertheless, there is data available (though likely incomplete) for the number of contracts which have been won by state-owned enterprises; in the following table that information is detailed by type of procedure for the last five years (the share in terms of number of procedures for each type of procedure is included between parentheses):

**Number of contracts won by state-owned enterprises
by type of procedure and by year (2014-2018)**

Year	Direct contracting	Direct contracting - Correos de Costa Rica	Procedure by principles	Abbreviated tender	National tender	Total
2014	513 (0,86%)	1 (0,6%)	45 (0,57%)	9 (0,26%)	0 (0%)	568 (0,77%)
2015	477 (0,81%)	2 (0,95%)	47 (0,68%)	0 (0%)	1 (0,2%)	527 (0,74%)
2016	374 (0,67%)	1 (0,42%)	57 (0,80%)	8 (0,25%)	0 (0%)	440 (0,65%)
2017	298 (0,58%)	6 (3,1%)	54 (0,73%)	0 (0%)	2 (0,40%)	360 (0,55%)
2018	255 (0,57%)	3 (2,33%)	21 (0,35%)	5 (0,15%)	4 (0,79%)	255 (0,45%)

Even though these numbers don't appear to be particularly high, private companies that compete for

public contracts have complained about what they consider to be favoritism in certain cases for state-owned enterprises. Because of this, a number of directives have been issued reminding the public administrations that even if they adjudicate contracts to public enterprises, the market and suitability studies that justify why these public enterprises are the most suitable for the job must still be carried out. Furthermore, the overuse of direct contracting procedures adjudicated to public enterprises - especially in cases where the object to be contracted is offered by numerous private suppliers- has been denounced before the Comptroller General's Office and the Commission for the Promotion of Competition.

Sources: CGR, 2018. Information request to the General Directorate of Asset Management and Administrative Contracting.

17. What share (% in terms of procurement volume) of public procurement contracts is won by foreign enterprises? _____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There's no data readily available regarding the share of public procurement contracts won by foreign enterprises.

18. What is the share (%) of procuring entities which only used single source procurement in the total number of procuring entities? _____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There's no data readily available regarding the share of procuring entities which only used single source procurement in the total number of procuring entities.

4. Efficiency

19. What is the share (%) of failed tenders in the total number of tenders? 16%

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend. If possible, provide a breakdown of this data point by tenders with no bidders, cancelled tenders or unsuccessful tenders where no relevant competitor was found.

Comment: The following table shows the number of processes initiated and the number of procedures awarded. From this data the percentage of failed offers was extracted for the last 5 years.

Number of procedures initiated, awarded and percentage of failures 2014-2018.

Year	Procedures initiated	Procedures awarded	Percentage of failures
2014	82.958	73.259	12% (9.699)
2015	81.499	71.240	13% (10.259)
2016	75.906	67.626	11% (8.277)
2017	73.176	64.820	11% (8.356)
2018a	59.321	49.889	16% (9.432)

Source: CGR, 2018. Last update November 26th, 2018

20. What share (%) of planned public procurement expenditure was saved as a result of competitive procedures? ___

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There's no data readily available regarding the share of planned public procurement expenditure that was saved as a result of competitive procedures.

21. What is the share (% in terms of procurement value) of tenders where price is the only criterion compared to competitive procedures where other criteria are also used? ___

If possible, provide a comparison with several (at least 5) previous years, as well as a brief analysis of this data point.

Comment: The legislation in Costa Rica does not allow for competitive procedures where price is the only criterion.

22. What is the share (%) of non-executed contracts in the total number of contracts? ___

If relevant, provide a comparison with several (at least 5) previous years. If possible, provide a breakdown of this data point by type of procedure, i.e. competitive procedures vs. direct procurement. If possible, indicate the share (%) of non-executed contracts awarded through competitive procedures, as well as single source procurement.

Comment: There's no data readily available regarding the share of non-executed contracts.

5. Accountability

23. Describe the dispute settlement mechanism in public procurement, its composition, authority, level of independence, and decision-making procedures. What are the major strengths and problems in law and practice:

Comment: The Administrative Contracting Law mentions three types of complaints: objection against the announcement of the bid, appeal against the award act, and revocation. Each one responds to different moments of the process and has different deadlines for its presentation.

An objection recourse may be filed within the first third part of the deadline to submit bids. In the case of the appeals, they must be filed within ten working days following notification of the award act (in the case of public tender), and for revocation within five working days following the day in which the award act was communicated. In the case of small-scale direct contracting procedures, to file an appeal for revocation there is a period of two working days following notification of the award act.

The appeal and objection recourses are filed with the Comptroller General's Office in cases of public tenders; in these cases, the Comptroller General's Office functions as an independent review agency. In other cases (for example, direct contracting procedures), they are filed with the contracting administration which means that there's no independent review.

Also, the award act is not final as long as it has a pending appeal or revocation recourse. However, once the administrative procedure is exhausted, articles 90 and 92 of the Administrative Contracting Law state that "the interested party may challenge the final act, without suspension, before the Superior Contentious Court", so "if the contract contested has been executed or is in the process of being executed, the favorable judgment may only recognize the payment of the damages caused".

Source: Administrative Contracting Law Nº 7494, art. 81, 83-85, 90-92. Regulation of the Administrative Contracting Law Nº 33411, art. 144, 178-180, 182, 186, 192, 193, 195.

24. What is the number of complaints submitted to the dispute resolution board (or equivalent body)?

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There's no data readily available regarding the number of complaints submitted to the dispute resolution board (there's also not a single dispute resolution board; it depends on the type of procedure), but there's data available for the number of recourses and complaints lodged.

Annual amount of recourses lodged before the Comptroller General's Office and the Active Administration (2014-2018)

Year	Objections before the	Revocations before the	Objections before the CGR	Appeals before the CGR

	administration	administration		
2014	369	920	524	430
2015	653	1104	537	356
2016	742	1470	502	392
2017	964	1739	460	330
2018	923	1858	301	256

Source: CGR, 2018. Consultas de Recursos de Objeción, Revocatoria y Apelación.

**Annual amount of complaints lodged
before the Comptroller General's Office (2014-2018)**

Year	Complaints lodged before the Comptroller General's Office
2014	147
2015	146
2016	153
2017	155
2018	136

Source: CGR, 2018. Sistema de denuncias (SIDE).

Note: Active Administration refers to the administration in charge of the procurement procedure.

25. What is the share (%) of disputed tenders in the total number of tenders? ____

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: There's no data readily available regarding the share of disputed tenders.

26. What share (%) of disputes was won by the initiator in the Dispute Resolution Board (or equivalent body)? ____

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: There's no data readily available regarding the share of disputed tenders won by the initiator in the Dispute Resolution Board.

27. What share of decisions of the Dispute Resolution Board have been taken to courts? ____

If possible, provide a comparison with several (at least 5) previous years and possible explanations for the resulting trend.

Comment: There's no data readily available regarding the share of decisions of the Dispute Resolution Board that have been taken to courts.

28. What share (%) of the total competitive procurement spending was received by companies that have donated (including private donations by their owners) to the current government? ____

If possible, please provide an analysis of this data point in 2-3 sentences.

Comment: Costa Rican legislation prohibits legal entities of any nature and nationality to make contributions or donations in cash or in kind to political parties.

Source: Costa Rica Electoral Code, art. 128.

29. What share (%) of the total single source procurement spending was received by companies that have donated (including private donations by their owners) to the current government?

If possible, please provide an analysis of this data point in 2-3 sentences. Have there been any high profile cases of politically affiliated companies receiving single source contracts?

Comment: Costa Rican legislation prohibits legal entities of any nature and nationality to make contributions or donations in cash or in kind to political parties.

Source: Costa Rica Electoral Code, art. 128.

6. Transparency

30. Can public procurement related data be downloaded in bulk? If yes, can data be downloaded in any of the following formats - CSV, JSON, or XML?

Comment: The Integrated System of Contractual Activity (known as SIAC for its initials in Spanish) of the Comptroller General's Office, which collects and presents data on contracting procedures, permits downloads in CSV and HTML formats. Link: <https://cgrweb.cgr.go.cr/f?p=307:2:0::NO::>

But SICOP, the single unified digital system for public procurement, does not allow downloads in bulk in any kind of format.

31. Are there any significant data quality issues? (Are any control mechanisms in place to ensure data quality is maintained?)

Comment: Yes, the main problem is that most of the data is unverified and possibly incomplete. There are not any control mechanisms in place to ensure data quality.

32. Please fill the Data Transparency Table below by indicating either “Yes”, “No” or “N/A” in each empty slot:

Data Transparency Table - Access to Public Procurement Related Documents								
Type of document	Is this information required to be public by law?	Is this information publicly available?	Is the database complete ?	Electronic	Machine-readable *	Free of charge	Exact format	Link
Public Procurement Law documents	All legislation is public.	Yes	Yes	Yes	Yes	Yes	HTML	http://www.pgrweb.go.cr/scii/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=24284&nValor3=112939&strTipM=TC#download
Annual public procurement plans	Yes (art. 6, Administrative Contracting Law N°7494)	Yes	-	Yes	Yes	Yes	PDF (in the official Gazette)	https://www.imprentanacional.go.cr
Notices of intended procurement	Yes (art. 40, 40 bis, Administrative Contracting Law N°7494)	Yes	-	Yes	Yes	Yes	HTML	https://www.imprentanacional.go.cr/gaceta/#ui-accordion-ct100_MainContentPlaceHolder_ContentidoGacetaDiv-header-4 And

								https://www.sicop.go.cr
Amendments to tender documentation	Yes (art. 42 subsection (d, Administrative Contracting Law N°7494)	Yes	-	Yes	Yes	Yes	HTML	https://www.imprentanacional.go.cr/gaceta/#ui-accordion-ct100_MainContentPlaceholder_ContentIdGacetaDiv-header-4 And https://www.sicop.go.cr
Tender candidate applications	Yes (art. 40, 40 bis, Administrative Contracting Law N°7494)	-						
Bids	Yes (art. 40, 40 bis, Administrative Contracting Law N°7494)							
Tender commission decisions	Yes (art. 40, 40 bis, Administrative Contracting Law N°7494)	Yes	-	Yes	Yes	Yes	HTML	https://www.sicop.go.cr
Information on subcontractors	Yes (art. 58, Administrative Contracting	No	No	No	No	No	No	

	Lawt N°7494)							
Procurement contracts	Yes (art. 40, 40 bis, Administra tive Contracting Law N°7494)	No	No	No	No	No	No	
Contract amendments	Yes (art. 40, 40 bis, Administra tive Contracting Law N°7494)	No	No	No	No	No	No	
Contract performance information	Yes (art 40, 40 bis, Administra tive Contracting Law N°7494)	No	No	No	No	No	No	
Payment receipts	No	No	No	No	No	No	No	
Inspection and quality control reports	Yes (art. 61, Administra tive Contracting Law N°7494)	No	No	No	No	No	No	
Complaints	No	No	No	No	No	No	No	
Dispute resolutions	No	No	No	No	No	No	No	
Internal and external audit reports	No	No	No	No	No	No	No	

* For the purposes of this questionnaire, machine-readable means: for quantitative data formats, such as: JSON, CSV, XML, and for text documents - documents that are NOT uploaded in the form of a scanned photo or PDF file.

In the comment box below, please elaborate on any irregularities or important details related to the above table.

Comment: Costa Rica doesn't have an Access to Information Law, so the only law that regulates publicity and transparency in public procurement processes is the Administrative Contracting Law No. 7494, more specifically articles 6, 40 and 40 bis, but they are not sufficiently detailed.

33. In addition to what is listed in the Data Transparency Table above, are there any gaps in the public procurement database/s? (e.g. gaps in the completeness of data from specific procurers or specific time periods?)

Comment: Yes, for example, there are gaps in the database of suppliers to the State. In general, the systems available suffer from a lack of complete statistics to monitor public procurement or adopt decisions that can improve its management.

It's also important to mention that when we asked RACSA, the institution responsible for administering SICOP, for data regarding various aspects of the system, we didn't receive a response.

7. Major Strengths and Weaknesses

34. What are the 3 major gaps between the country's public procurement legislation requirements and their implementation in practice? (e.g. ignored provisions, legal loophole, etc.) What are your recommendations for how to align the practice with the legislation? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Gap: All public procurement procedures are still not being conducted through the single unified digital system, known as SICOP. Despite the fact that by law its use is mandatory, there are still dozens of institutions that use different systems, including universities and half of the municipalities. Most of these institutions use their own systems and some even continue to carry out paper-based procedures or use outdated platforms.

Recommendation: Prioritize fulfilling the goal that 100% of public institutions use the single unified digital system and ensure that this system meets high standards of transparency, access to information and accountability in a complete, clear, and efficient manner. This system must be consolidated in terms not only of coverage but also so that, without exception, every procurement procedure can be conducted through it. Also, the legislation and regulations must take into account the current technological context to ensure that they can keep up with changes in technology and that they can contemplate the different variables that can arise during the digitalization of public

procurement

procedures.

2.

Gap: The public procurement process that is most used at the national level by the different Administrations is direct contracting in all the modalities that are allowed. The legislation permits direct contracting as exceptional procedures, however, they have become the rule instead of the exception. These direct procedures -especially in the cases of small-scale contracting- have abbreviated timeframes to present offers and present complaints, do not require a minimum number of offers and are not overseen by the Comptroller General's Office. Furthermore, in many cases the potential bidders are invited directly by the contracting entities under their complete discretion. The Comptroller General has detected that, due to a fixation in finishing the procurement processes in the fastest possible way, these direct procedures are overused and often have inadequate results.

Recommendation: The Administrations must understand that complying with all the legal requirements included in the national competitive tenders is an option that, in the long term, can guarantee real success in meeting institutional needs. By constitutional provision, the procurement of goods and services of the State must be carried out by means of national competitive procedures in its various modalities, given that they are more rigorous and have greater competitive openings among suppliers, and in order to guarantee better purchasing conditions for the State and greater oversight. In the cases in which using direct contracting is indispensable, these procedures should be carried out through SICOP to eliminate the discretionality of the contracting entities when it comes to inviting possible bidders.

3.

Gap: Difficulties in the real access to information in an easy and direct manner by anyone. While it is true that the Administrative Contracting Law states that the single unified digital system should contain all the contractual activity (planning, procedures and execution), there is a large number of institutions that do use SICOP but do not use several of its modules, especially those related to contract execution and dispute resolution. In general, many of the data that article 40 of the Law says should be available on the platform is not available, and even when it is available, it is not available in open formats. As a corollary, as we experienced, even when requesting directly to the system's administrators about specific data or statistics, these data was not forthcoming. For its part, the information provided by the Integrated System of Contractual Activity (SIAC) is very limited, which implies that the citizens and the Public Sector itself lack complete statistics to monitor the contracting system or adopt decisions that may improve its management.

Recommendation: Guarantee effective compliance with the Regulation for the use of SICOP, which was published recently (on January 18). Ensure that all institutions use all the modules and functionalities of the platform. Centralize all statistics related to public procurement on the platform and fulfill article 40 of the Law on Administrative Procurement to ensure that all data is published in

open formats and is easily accessible. Furthermore, SICOP should stop being managed by RACSA (a public enterprise) and pass into the control of the Ministry of the Treasury or its General Directorate of Asset Management and Administrative Contracting.

35. What are the 3 major weaknesses / challenges of the country's public procurement system as a whole? And what are your recommendations for overcoming them? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Challenge: Costa Rica has a highly fragmented public procurement system with a multiplicity of systems, rules, standards and criteria applied indiscriminately by different public entities. Despite the existence of the Administrative Contracting Law and its Regulation, not all entities have them as their primary norms: various public enterprises have their own laws or regulations on public procurement processes. Also, even the public bodies that are subject to the scope of the law have the possibility of establishing, through internal regulations, various aspects related to their organization, functions and even other activities of the process of contracting.

Recommendation: Reform the current legal framework so as to make it simpler and more integrated, covering the entire contracting cycle, not just the bidding phase (the current system does not cover adequately the other two phases: planning and execution of contracts). The reformed framework should also apply to the entire Public Sector without exceptions, thus replacing the excessive legislation and multiple laws that plague the current system.

2.

Challenge: There is not a unique governing body that has the tasks of managing and supervising the public procurement system, establishing the overall objectives in contracting, strengthening consolidated purchases, evaluating the system and implementing improvements. The Comptroller General usually does "second-floor" controls and the General Directorate of Asset Management and Administrative Contracting has oversight only over the Central Government. In the absence of a unique, strong governing body for the entire Public Sector, institutions tend to follow different guidelines.

Recommendation: Approve legislation that names the Ministry of Finance as the governing body of the public procurement system for the entire Public Sector, with complete technical autonomy and the capacity to emit binding decisions. There are already bills in the Legislative Assembly that have this objective.

3.

Challenge: The absence of an institutionalized mechanism that allows for the participation of civil society in the public procurement system. In general terms, there is little citizen participation and almost no supervision from civil society over the contracting processes, and little consideration of

public opinion and of interested parties, both in the design stages and in the contractual execution stages.

Recommendation: The establishment of a Public Procurement Observatory (or a similar organ) that opens the procurement processes to external monitoring and ensures transparency and legitimacy. The supervision of bidding and procurement processes then could be carried out by anti-corruption offices, private sector organizations and civil society, the media and the general public.

36. What are the 3 major strengths / successes of the country's public procurement system as a whole? Please provide a brief description of each in a maximum of 4-5 sentences.

1.

Costa Rica has a Public Procurement System that meets its basic objective of providing the goods and services required by public entities to fulfill their functions and It does not face an excessive crisis of inefficiency or corruption.

2.

Costa Rica has a main legislative framework which includes several best practices, such as defined procedures for different types of contracting, privileging full competitive national tender procedures (although in practice it is not the most used procedure), a liability regime that reaches both public and private officials, rules for participating in public procurement procedures and openings of bids, transparency in the conduct of the procedures, among other aspects. The problem here, as already mentioned, is that the system is fragmented and not all institutions follow the guidelines of the main legislation.

3.

In recent years, changes have been made in the right direction, such as the creation of the Integrated System of Public Procurement (SICOP) in 2015 by Executive Decree 38830-H-MICITT. In addition to that, in December of that same year the National Policy for Sustainable Public Procurement was enacted and the National Steering Committee for Sustainable Procurement was created. Also, there's more legislation approved recently or under discussion: Law No. 9395 (Transparency of public procurement through the reform of article 40 and the addition of article 40 bis to Law No. 7494 and its reforms) promulgated in 2016; the decree 40270-H that reforms the Law of Administrative Procurement, the Executive Decree 33411 and its reforms of March 27, 2017, Directive N° 025-H of October, 2018 which declares that any procurement procedure that uses funds from the National Budget must be carried out through SICOP, the publication of the Regulation for the use of SICOP in January, 2019; the Project to reform the Administrative Contracting Law, which seeks to strengthen a unique governing body for public procurement, and is currently in the Legislative Assembly. In addition, since April 2017 a Public Procurement Strengthening Plan is under implementation that, in a

timeframe of 36 months, will seek to solve many of the problems detected in this questionnaire.