

TRANSLATION 550/2016 - REGULATORY DECREE N° 251/015.- -----

CM/238.- Uruguay - Bicentenary 1811-2011.- Republic of Uruguay

- Ministry of Economy and Finance.- -----

Ministry of the Interior - Ministry of Foreign Affairs -

Ministry of Economy and Finance - Ministry of Defense -

Ministry of Education and Culture - Ministry of Transportation

and Public Works - Ministry of Industry, Energy and Mining -

Ministry of Labor and Welfare - Ministry of Health - Ministry

of Livestock, Agriculture and Fishing - Ministry of Tourism

and Sport - Ministry of Housing, Use of Land and Environment -

Ministry of Social Development.- -----

Montevideo, September 14, 2015.- -----

In view of the Regulatory Decree N°17/012 of January 26, 2012
and its amendment, Decree N°280/012 of August 24, 2012.- -----

Whereas: I) the above regulations apply to Law N°18786 and
govern many issues related to the implantation and execution
of Public-Private Partnership contracts. -----

II) In accordance with the experience gathered, it is deemed
convenient to adjust the regulations in force.- -----

In view of the above, -----

THE PRESIDENT OF THE REPUBLIC, ACTING AT a session of the
council of Ministers, hereby decrees:- -----

Article 1.- The following subsection is added to Article 6 of
Decree N° 17/012 of January 26, 2012: -----

"n) deal with the local and/or international financial sector
with the purpose of facilitating the financial structuring of
Public-Private Partnership projects and perform the

interinstitutional coordination with the contracting Government entities.”- -----

Article 2.- Let Article 13 of Decree N°17/012 of January 26, 2012, under the wording given by Decree N°280/012 of August, 24, 2012 be substituted, which shall be worded as follows: ----

“**Article 13.-** Preliminary assessment studies.- -----

The preliminary assessment studies referred to by Article 16 of Law 18.786 of July 19, 2011 shall be carried out by the contracting Government entity according to the Best Recommended Practices. Such studies shall be divided in the following stages: -----

a) Eligibility, whose evaluation shall be carried out by the Ministry of Economy and Finance.- -----

b) Pre-feasibility or Feasibility, as the case may be, whose evaluation shall be carried out by the Planning and Budget Office.- -----

c) Assessment document, whose evaluation shall be carried out by the Ministry of Economy and Finance.- -----

These studies shall be simultaneously submitted to the Planning and Budget Office and the Ministry of Economy and Finance for follow-up, without prejudice of the competences of each office.”- -----

Article 3.- Let Articles 15, 16, 17, 18, 19, 21, 23, 31, 32, 33, 34, 68, 71, 72, 73, 76 and 81 of Decree N° 17/012 of January 26, 2012 be substituted, which shall be drawn with the following wording: -----

“**Article 15.-** Public initiative.- -----

When the contracting Government entity intends to implement a public initiative by a Public-Private Partnership modality, the contracting Government entity shall communicate it to the Ministry of Economy and Finance indicating what the object of the initiative is and identifying who is the responsible one that shall act as a contact.- -----

Such communication shall be published in the Ministry of Economy and Finance's website and shall be registered in the Project Register pursuant to Article 9 of this Decree.- -----

The contracting Government entity shall have a 180 day term to present the eligibility and pre-feasibility or feasibility studies, as from the submission of the above communication." --

"Article 16.- Project Eligibility.- -----

Within a 180 calendar day term as from the communication mentioned in the above Article, the contracting Government entity shall present the evaluation regarding the Eligibility of the project before the Ministry of Economy and Finance.- ---

Such studies shall suit the Guidelines for the Best Eligibility Recommended Practices, approved by the Ministry of Economy and Finance.- -----

The Ministry of Economy and Finance may disregard this evaluation under justification, by itself or by request from the contracting Government entity. -----

The Ministry of Economy and Finance shall have a thirty day term to pronounce its decision."- -----

"Article 17.- Pre-feasibility and feasibility studies.- -----

Within a 180 day term as from the communication referred to by

Article 15 of this Decree, the contracting Government entity shall submit the pre-feasibility or feasibility studies to the Planning and Budget Office in order to be advised by it and obtain its technical approval.- -----

These studies shall meet the requirements established in the Guidelines and Methodological guides approved by the Planning and Budget Office.- -----

Without prejudice of Article 13 of this Decree, the Planning and Budget Office shall have a ninety calendar day term to give its approval, which must be communicated both to the contracting Government entity and the Ministry of Economy and Finance. -----

The contracting Government entity shall inform the Planning and Budget Office about all the modifications and/or extensions subsequent to the pre-feasibility or feasibility studies."- -----

"Article 18.- Assessment document- -----

Once a favorable report on the project eligibility has been obtained or a report from the Ministry of Economy and Finance that states this evaluation is dispensed with, and the report from the Planning and Budget Office as mentioned above has also been submitted, the contracting Government entity shall elaborate a document that shall include: -----

- a) A financial modeling from a private perspective with a determination of the contractor's estimated remuneration.- ----
- b) A quantitative analysis showing that the proposed contract modality is the one that allows the Government to obtain the

"Best Value for Money". This analysis must comply with the Guidelines for the Best Recommended Practices of Best Value for Money, previously approved by the Ministry of Economy and Finance.- -----

c) Consistency with future expenditures related to the Contract with its budget estimates.- -----

The document shall be submitted to the Ministry of Economy and Finance within a maximum period of ninety calendar days as from the date of approval pursuant to Article 17 of this Decree, which may be extended by the Government or by request of the delivery of the interested party by a justified resolution from the Planning and Budget Office.- -----

The assessment document may contain a qualitative analysis justifying the proposed risk allotment and that the choice of this type of contract is the most convenient to satisfy public needs. Furthermore, if this analysis is not included, the Ministry of Economy and Finance may request it.- -----

The Ministry of Economy and Finance shall have a sixty calendar day term to pronounce its decision as from the date of the reception thereof".- -----

"Article 19.- General contracting terms.- -----

The contracting Government entity shall elaborate the general contractual terms and the contract draft.- -----

The contractual terms shall contain the following points: -----

a) Competitive procedure to be employed.- -----

b) Description of the object of the contract and scoping of the activities to be carried out.- -----

- c) Special and technical requisites and financial solvency required to the applicants.- -----
- d) Indication of the main factors that shall be considered on assessing the bids, specifying the qualification and awarding criteria.- -----
- e) Conditions and mechanisms for risk sharing between the contractor and the contracting party.- -----
- f) Causes and procedures to determine remuneration variations during the contract execution period and the applicable criteria concerning the balance of the economic-financial equation of the contract.- -----
- g) Destination of the works and equipment.- -----
- h) Offer and contract fulfillment guarantees.- -----
- i) All other items that may be determined in this instance and that may contribute to ensure a better understanding of the issues of the contract.- -----
- j) Legal basis and conditions regarding contract amendments as per Articles 47 and 48 of Law N°18.786 of July 19, 2011.- -----
- k) Definition of the notion of abnormal or disproportionate values in case that the competitive procedure so requires it.-
- l) Definition of the notion of substantial deviations as referred to by Article 29 of this Regulatory Decree.- -----
- m) Alternative control systems to be employed by the contracting Government entity and their costs.- -----
- n) Applicable conditions for competitive procedure expenses, in case of high complexity projects that may so require it.- --
- ñ) Early termination clauses.- -----

o) Granting tax benefits provided by Law N°16.906 of January 7, 1998, if applicable.- -----

The contractual terms and the contract draft shall be submitted to the Ministry of Economy and Finance for its consideration and to the Planning and Budget Office for its technical opinion. Both offices shall have a 90 calendar day term to pronounce their decision.- -----

The submission of these documents can be done together with the submission of the Assessment Document mentioned in Article 18 or within a maximum period of 120 calendar days as from the approval of the Assessment Document.- -----

In case the contractual terms were submitted prior to the report of the Ministry of Economy and Finance on the Assessment Document, the 90 day term shall be computed as from the issuing date of this report.- -----

Any modification made after the approval of the contractual terms and/or the contract draft shall have a favorable opinion from the Planning and Budget Office and the Ministry of Economy and Finance. Both the Planning and Budget Office and the Ministry of Economy and Finance shall have a 45 calendar day term to pronounce their decisions.- -----

The Government shall not go forward with the proceedings nor award any Public-Private Partnership contract about which the Ministry of Economy and Finance and the Planning and Budget Office have not given an opinion or produced a report.”- -----

“Article 21- Publications.- -----

The public call for bids shall be published in the Government

purchase website without prejudice of other means that may be deemed convenient to ensure the publicity of the call. The publication must be carried out at least ninety calendar days before to the submission of the bids.- -----

"Article 23.- Submission of the bids.- -----

The submission of the bids shall be done on the day and at the hour previously fixed and in the format required by the contractual terms.- -----

The bids shall include all the items required and necessary to carry out the project, in accordance with the contractual terms. Any supplementary information may be added but no requirement may be omitted.- -----

The bidders must deposit a bid security and submit a letter of commitment indicating that, in case of award, a company with an exclusive purpose shall be formed. In case the bidder turns into the contract awardee, the bidder shall submit the bidder's company bylaws to be approved by the contracting Government entity in a thirty working day term as from the notification of the interim award pursuant to Article 23 of Law N°18.786 of July 19, 2011.- -----

Concerning the identification of the bidder, the data identifying the natural or legal person related to the bidder must be clearly stated.- -----

Furthermore, an electronic domicile (e-mail) must be established for the contractual proceedings.- -----

"Article 31.- Report from the Public-Private Partnership Project Unit.- -----

The contracting Government entity, upon having analyzed the report from the Technical Committee, shall communicate the Public-Private Partnership Project Unit the result of the bid examination, which shall produce the report as required by Article 23 of Law 18.786 of July 19, 2011. In order to make this report, the Public-Private Partnership Project Unit shall review the bid in accordance with the previous studies and shall confirm the attainment of Value for Money. The Public-Private Partnership Project Unit shall have 45 calendar day term to produce the report required.- -----

After the pronouncement of the Public-Private Partnership Project Unit, the contracting Government entity shall give the bidders access to the proceedings during a 15 working days term. In case that the Public-Private Partnership Project Unit objects the Technical Committee report, the access to the proceedings to the bidders shall take place once the contracting Government entity has answered the objections raised.- -----

During the period to access the proceedings, the bidders may contest in writing controversial points of the proceedings and the report from the Technical Committee.- -----

It shall not be necessary to wait the period given to lapse if the bidders declare they do not have protests to make.”- -----

“Article 32.- Bid interim award.- -----

The contracting Government entity shall perform the interim award, or the rejection of the bids submitted.- -----

The award shall be conferred to the bid most advantageous to

the Government's interests and service needs, expressly declaring the bases on which the resolution was adopted.- -----

In this resolution the essential issues of the contract shall be established and the ranking of the bids that could have been awarded in default of the interim award shall be certified.- -----

This administrative act shall be notified to all bidders."- ---

"Article 33.- Intervention of the Court of Audits.- -----

The interim and final award shall be examined by the Court of Audits, and in case of the final award, a favorable report from the Information and Financial Analysis Unit of the Central Bank of Uruguay shall be required."- -----

"Article 34.- Final awarding of the bids.- -----

The Government shall establish a period no shorter than 120 calendar days to whom was ranked in the first place of the interim award, in order to let the bidder submit all the documents whose submission had been postponed until this stage, as well as to deposit the contract performance security and accredit the terms of the financial structuring.- -----

In order to accredit the terms of the financial structuring, the interim awardee shall submit prior to the final award the following: -----

a) Economic-financial plan in the terms and conditions defined in the contractual terms.- -----

b) In case of opting for a capital market financing: -----

* A preliminary ranking report issued by a credit rating agency. In that report the credit rating agency must give a

rating grade for the project, which shall be conditioned by the prospectus of the financial instrument proposed and the draft of the Public-Private Partnership contract.- -----

* Grade issued by at least one public or private pension fund, insurance company, multilateral agency, investment fund or similar ones, explaining their interest in the proposed financial instrument and their conformity with the related projected financial instrument prospectus and the draft of the Public-Private Partnership contract.- -----

* Registration of the issuer at the Uruguayan Central Bank.- --

* Draft of bond to issue.- -----

c) In case of opting for local, international, multilateral or other banking financing: -----

* Draft of the financing contract with the involved institutions.- -----

*Grade issued by the involved institution, where it is stated its will to sign such contract.- -----

In any of the two cases, the contractor shall identify the prospective pledgees and financial creditors, as well as prospective assignees of the contract pursuant to the Chapter Ten of this Decree.- -----

Without the cases provided above, the contracting Government entity shall define the necessary requirements to accredit the terms of the financial structuring.- -----

In any case, the approval of the terms of the financial structuring must be approved by the Ministry of Economy and Finance.- -----

Any alteration, even happening after the final award, shall require the authorization of the contracting Government entity, upon a favorable report from the Ministry of Economy and Finance.- -----

The contracting Government entity and the Ministry of Economy and Finance may require additional information. The final award shall be notified to each one of the bidders and the Court of Audits."- -----

"Article 68.- Intervention of the Public-Private Partnership Project Unit.- -----

Within the scope provided by subsections first and second of Article 39 of Law N°18.786 of July 19, 2011, the Public-Private Partnership Project Unit may: -----

a) Request any information or documents related to the compliance of the contracts.- -----

b) Request monitoring and follow-up with the contracting Government entity, with the National Corporation for Development or third parties hired for the control and follow-up of the contract (Article 85 of this Decree), as the case may be.- -----

c) Recommend, by a justified report, to the contracting Government entity hiring specific external audits to contribute to ensure the correct follow-up of the contracts indicating in each case the scope and goals of the audit to be made."- -----

"Article 71.- Contract amendment by the Government.- -----
The Public-Private Partnership Contract may acknowledge the

powers of the contracting Government entity to amend the contract, stipulating concrete points of the contract susceptible to be modified, the considerations that may correspond as well as the maximum additional investment amount that the amendments may require and the period in which the these powers can be exercised.- -----

Upon having stipulated the above powers, the contracting Government entity shall produce a technical report in which the reasons and other issues that justify the contract amendment are mentioned. The scope and contents of the amendment must be specified. This report shall be sent to the Planning and Budget Office, the Ministry of Economy and Finance and the Court of Audit. Each one of these offices shall pronounce their decisions in a 45 calendar day term as from the reception of the technical report.- -----

The contract amendment may not be done without the prior pronouncement of their decisions by the Planning and Budget Office and the Ministry of Economy and Finance. At any rate, the maximum amount of the new investments and expenses of the service shall be established in the bidding documents and in any case may not exceed 20% (twenty percent) of the works budget or operation expenses agreed to in the original contract. -----

"Article 72.- Bilateral amendment of the contract.- -----

The Public-Private Partnership Contract may establish conditions, that, when met, the parties to the contract may by mutual agreement establish the contract review. If such

possibility was not provided by in the contract, the parties may not amend it except for the renegotiation option referred to by Article 49 of Law N° 18.786 of July 19, 2011.- -----

In case the possibility of an amendment is agreed upon, some issues of the contract may be stipulated as to be amended, including the solutions to amend the contract chosen by the parties, the maximum amount of additional investment that the amendments may require and the term within which the review may be agreed to. -----

At any rate, the maximum amount of these new investments may not exceed 50% (fifty percent) of the works estimates or the operation expenses as per the original contract, and during the construction stage this percentage may not exceed 30% (thirty percent).- -----

The contract amendment may not be carried out without the previous pronouncement of the Planning and Budget Office and the Ministry of Economy and Finance.- -----

"Article 73.- Renegotiation of contracts. -----

Any of the co-contractors may require the other party to renegotiate the Public-Private Partnership Contract, when any of the premises provided by Article 49 of Law N°18.786 of July 19, 2011 occurs.- -----

The party requiring to renegotiate the contract shall notify the other party indicating the clauses to be renegotiated, the causes for it, as well as the solutions suggested in that respect.- -----

Regarding hypothesis B) of Article 49 of Law N°18.786 of July

19, 2011, only may be considered as causes of force majeure for negotiation those that affect the variables of the project enumerated individually for each Public-Private Partnership contract.- -----

The renegotiation of the contract may not be carried out without the previous pronouncement of the Planning and Budget Office and the Ministry of Economy and Finance.- -----

Article 76.- Assignment of the contract.- -----

The contractor shall request from the contracting Government entity a previous and express authorization to assign in whole or in part the Public-Private Partnership contract.- -----

The request shall be directed to the contracting Government entity. This shall include, among others, the terms and conditions in which the assignment shall take place, the exact scope of the assignment and the object that the assignment affects, a report attesting the technical and financial capacity of the assignee to duly execute the contract.- -----

During a 60 day terms as from the submission of the assignment petition, the contracting Government entity shall verify if the assignee meets all the requirements and conditions needed to duly fulfill the contract. Clarifications or additional information may be requested in that respect.- -----

If the above period elapses and the contracting Government entity do not resolve about the assignment petition, it shall be deemed that the assignment has been rejected. Without prejudice of the above, the contracting Government entity may resolve any time, expressly, about the assignment petition,

whether accepting it with modifications or rejecting in whole or in part.- -----

The contract assignment may not be accepted out without the previous pronouncement of the Planning and Budget Office and the Ministry of Economy and Finance, who shall have a 45 calendar day to pronounce a decision.- -----

The express decision by the contracting Government entity shall be personally notified to the contractor.- -----

In the resolution by which the assignment is authorized, the scope and contents of the assignment must be indicated, as well as the terms during which the assignment must be performed and the deposit of the related guaranty.- -----

Until all formalities of the assignment have been met as well as the deposit of guaranties, the assignor shall still be liable to the Government.- -----

"Article 81.- Controlling rights.- -----

When the value of pledge from a Public-Private Partnership contract would suffer losses for causes attributable to the contractor, the pledgee may request the contracting Government entity to declare that there is such loss.- -----

If the loss is confirmed, the pledgee may also request to the contracting Government entity to order the contractor to act or not to act in order to avoid or redress the damages, with the warnings that the contract may be terminated.- -----

If the contractor do not redress the damages and there are grounds for contract termination due to non-fulfillment of any of the contractor's obligations, the contracting Government

entity, before acting, must notify the pledgee its decision to terminate the contract pursuant to Article 57 of Law N°18.786 of July 19, 2011, and must demand that the pledgee expresses his intention to enforce the pledge or in turn, to continue the execution of the contract either directly or through an assignment to a third party as provided by in the above article.”- -----

Article 4.- Let these presents be communicated, published, etc.- -----

/Signed/: Tabaré Vázquez - President of the Republic.- -----

/There follow the signatures of the Ministers/.- -----

I, the undersigned Public Translator, state the foregoing -a copy of which is registered under N°550/2016 in my private file- to be a faithful and complete translation of the attached document /REGULATORY DECREE N° 251/015/, written in Spanish. Montevideo, May 21, 2016. -----