

# **REGULATORY ALERT**

## **OPPORTUNITIES FOR PUBLIC WORKS CONCESSIONS – MODIFICATIONS TO SUPREME DECREE No. 181**

**SEPTEMBER 2024**



# Opportunities for Public Works Concessions – Modifications to Supreme Decree No. 181

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This article reflects the modifications made to **Supreme Decree No. 181** through **Supreme Decree No. 5216** on September 4, 2024, which open the possibility for both Municipal Autonomous Departmental Governments, as well as National Strategic Public Companies (EPNE, for its acronym in Spanish), to initiate procurement processes for **Public Works Concessions, and not just for the use of public domain assets and the provision of public services** as had been the case until now.

The main changes are summarized below:

## 1. Article 5 (Definitions):

- The definition of “Administrative Concession” has been expanded. Now, in addition to referring to the use of a public domain asset or the provision of a service, the concession may also involve the management, execution, use, and enjoyment of a public work or service. It is established that the State will retain control and ownership, and those assets, works, or services that are prohibited for concession by the Constitution or the Law are excluded.

## 2. Article 78 (Administrative Concession):

- The concession of public assets, works, and services must be carried out exclusively through public tender, whether national or international. In some cases, when the magnitude and complexity justify it, prequalification may be used. The conditions for evaluation, selection, and awarding are specified and will be regulated by each public entity.

## 3. Article 83 Bis (EPNE):

- EPNEs may directly conduct their procurement processes for goods and services related to their business operations without being conditioned by their production function or the generation of surpluses. It is specified that these procurements must be regulated by each EPNE in its respective regulations and recorded in the State Procurement System (SICOES, for its acronym in Spanish) for amounts exceeding 20,000 BOB. Processes such as the importation of goods and the direct procurement of refurbished machinery under certain guarantees are also permitted.

## 4. Third Transitory Provision:

- It is established that, until the Governing Body develops the model Base Procurement Documents (DBC, for its acronym in Spanish) for concessions, public entities must create their own DBCs without requiring authorization from the Governing Body.

These modifications primarily aim to increase flexibility and efficiency in the concession of public services and works, especially in the context of EPNEs, by improving

procurement processes and ensuring the participation of the private sector under clearer and more regulated conditions.

They enable the development of infrastructure projects such as bridges or roads through Concessions that may be carried out by private sector participants.

Supreme Decree No. 0181	Modifications to Supreme Decree No. 0181 through Supreme Decree No. 5216
<p>ARTICLE 5.- (DEFINITIONS). For the purposes of these Basic Regulations of the Goods and Services Administration System (NB-SABS, for its acronym in Spanish) and their regulations, the following definitions are established:</p> <p>e) Administrative Concession: It is a form of procurement between a public entity and a natural or legal person for the use of a public domain asset or the provision of a public service for a limited time in exchange for compensation; excluding those assets and services that are not eligible for concession under the provisions of the Political Constitution of the State or the Law.</p>	<p>ARTICLE 5.- (DEFINITIONS). For the purposes of these NB-SABS and their regulations, the following definitions are established:</p> <p>"e) Administrative Concession: It is a form of procurement between a public entity and a natural or legal person <b>for the management, execution, use, and/or enjoyment</b> of a public asset, <b>work</b>, or service for a limited time, determined <b>by the nature of the concession and/or the proponent's investment, while the State retains control and ownership thereof.</b> Assets, works, or services that are not eligible for concession under the provisions of the Political Constitution of the State or the Law are excluded;"</p>
<p>ARTICLE 78.- (ADMINISTRATIVE CONCESSION). The Administrative Concession of goods and services, depending on the amount, must be conducted in accordance with the modalities established in these NB-SABS.</p>	<p>"ARTICLE 78.- (ADMINISTRATIVE CONCESSION).</p> <p>I. The concession of public assets, <b>works</b>, and services must be carried out <b>exclusively through the Public Tender modality, whether national or international</b>, as established in these NB-SABS. Additionally, <b>prequalification may be employed</b> when the magnitude, complexity, and technical characteristics warrant it.</p> <p>II. The evaluation, selection, and awarding, as well as the guarantees and other conditions for these Concessions, must be regulated by each public entity. Likewise, depending on the nature of the Concession's subject matter, entities may define the specific conditions of the contract."</p>
<p>ARTICLE 83 BIS. - (NATIONAL STRATEGIC PUBLIC COMPANIES).</p> <p>I. EPNEs, pursuant to their legal nature, <del>based on its function of production and generation of surpluses</del>, may directly conduct their procurement processes for goods and services aimed at fulfilling activities directly related to their business or commercial operations. The procedures, guarantees, advance payment percentages, and other conditions for these procurements must be regulated by each EPNE in its Specific Regulations for the Goods and Services Administration System for National Strategic Public Companies (RE-SABS-EPNE, for its acronym in Spanish) and aligned with the Governing Body.</p> <p>EPNEs must register in the SICOES procurements exceeding BOB 20,000 (TWENTY THOUSAND 00/100 BOLIVIANOS), in accordance with the provisions of the SICOES Operations Manual.</p> <p>II. <del>The EPNE shall apply the contracting modalities established in these NB-SABS, for the contracting of goods and services related to activities that do not fall within the provisions of Paragraph I of this Article.</del></p> <p>III. <del>In addition, the EPNE may:</del></p> <p>a. <del>Import goods for collection and marketing in the domestic market, when their supply is insufficient or they do not occur in the country;</del></p> <p>b. <del>Carry out according to their production processes and availability of resources, the direct contracting of machinery and equipment reconditioned, as long as they have the guarantee issued by the manufacturer or legal representative, which allow an optimal operation for a</del></p>	<p>"I. EPNEs, in accordance with their legal nature, may directly carry out their procurement processes for goods and services aimed at fulfilling activities directly related to their business or commercial operations. The procedures, guarantees, advance payment percentages, and other conditions for these procurements must be regulated by each EPNE in its RE SABS EPNE and aligned with the Governing Body. <b>Likewise, depending on the nature of the procurement's subject matter, they may define the specific conditions of the contract and its deferred validity.</b></p> <p>EPNEs must register in the SICOES procurements exceeding BOB 20,000 (TWENTY THOUSAND 00/100 BOLIVIANOS), in accordance with the provisions of the SICOES Operations Manual.</p> <p><b>Under the responsibility of the Maximum Executive Authority (MAE, for its acronym in Spanish), during the last quarter of the year, a procurement process for goods and services for the next fiscal year may be initiated, up to the signing of the contract, with the provision that its validity, as well as the arising of obligations and commitments, are subject to the approval of the corresponding budget, except in the case of investment projects."</b></p>

<p>rational time established in the guarantee. c. Carry out the direct execution of productive infrastructure works</p>	
<p>THIRD TRANSITORY PROVISION. - Until the Governing Body prepares the DBC models for Turnkey, Proponent Financing, and <a href="#">Concession Procurement</a>, public entities must develop their own DBCs within the framework of these NB-SABS; these documents will not require authorization from the Governing Body.</p>	<p>"THIRD TRANSITORY PROVISION. - In the specific case of Turnkey, Proponent Financing, and <a href="#">Administrative Concession</a> procurement processes, the Governing Body will prepare Reference Models of DBCs, and until these are published in the <a href="#">SICOES</a>, public entities must approve their own DBCs within the framework of these NB-SABS; these documents will not require authorization from the Governing Body."</p>

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