The Government of Brazil is the largest buyer of goods and services in the country. However, to obtain public contracts in Brazil can be difficult for foreign companies, which are at disadvantage if they are not established in the country. In Brazil, public procurement move about 10% do Gross Domestic Product (GDP).

What is the applicable legal framework in Brazil?

All public procurement in Brazil is federal, state or municipal level, public bodies also are obligated to purchase through public tender procedures, regulated by (amended by Law Nº 12.349, de 15 de December de 2010). The foreign bidders are subject to the following restrictions:

- When partnering with local Brazilian companies, the leader will be the Brazilian company (Article 33/ V/§ 1º)
- For the prosecution of the tender, the tenders submitted by foreign bidders will apply the same taxes as Brazilian bidders apply (Article 42/§ 4º).

In the case of a tie between proposals under the same conditions, preference is ensured, successively, to goods and services produced or provided:

- In the country (Article 3/II/§ 2º)
- By Brazilian companies (Article 3/II/§ 2º)
- Produced or provided by companies investing in research and technological development in Brazil (Article 3/IV/§ 2º) (Included by Law nº 11.196, de 2005)

2 http://portal2.tcu.gov.br/portal/pls/portal/docs/2057620.PDF
• Produced or provided by companies that comply with the law in the reservation charges for persons with disabilities or rehabilitated and that comply with the accessibility standards of the law (Article 3/V/§ 2º) *(Included by Law nº 13.146, de 2015) (Valid)*

Public procurement in Brazil maintains a protectionist policy. Foreign companies that want to access to the Brazilian market tenders, need to keep in mind the following conditions:

- **Multilateral financed tenders are regulated by multilateral financing agencies:** IDB (inter-American Development Bank), World Bank and CAF (Latin American Development Bank).
- **National financed tenders are regulated by Law 8666/93 (amended by Law Nº 12.349, de 15 de December de 2010) and require the establishment of the company in the country.**
- The legal expertise of the company in the country of origin or other countries is not taken into account (instead the experience of employee is appraised). That reason force foreign companies to partner locally, other alternative is buying a local company.

Law no. 12,349, 2010 is a protectionist law, which establishes preference for Brazilian domestic products and services (which can be extended, totally or partially, to Mercosur). Article 5 states that tenders may be established preference margins for national manufactured products and services that meet the Brazilian technical standards, as described in Article 6, which also states that that rule can be periodically reviewed in not exceeding deadlines of 5 years. The reasons for that protectionism rules, are the aim for the creation of wealth, rent, labor, tax collection, technology development and innovation in the country, etc. The price range of national preferential products shall not exceed 25% of that from foreign companies. It is still limited to national goods and services in contracting for information and communication technology systems, when the technology is developed in the country and produced according to the basic production process according to Law nº 10.176, de 11 of January de 2001.

Brazil has not signed the **WTO Agreement on Government Public Procurement**, which prohibits discrimination in goods and services originating in any of the other signatory countries. Brazil has introduced preferences for certain locally manufactured goods and services that promote technological improvements and create jobs locally in all levels of public administration (in some cases applies even if the price of the local supply is up to 25% higher than the best price). This discrimination against foreign suppliers affect to large sectors of Brazil's economy, most notably: agriculture, textiles,
footwear, pharmaceuticals, construction equipment, drilling, transport infrastructure, automotive, defense, education and ICT.

In general, foreign companies face significant challenges to successfully participate in public tenders in Brazil. A local partner can improve their chances of winning a public tender, in addition, a local partner would have another advantages such as keeping the foreign company informed, answer in short deadlines, correctly handle the bureaucracy, etc.

Where to find information?

The general information on public tenders in Brazil is available on the public procurement portal at: [http://www.comprasgovernamentais.gov.br](http://www.comprasgovernamentais.gov.br). There are also online tender purchasing portals for Brazilian states and municipalities: [www.comprasnetmunicipios.com.br](http://www.comprasnetmunicipios.com.br). In the section of links, we inform on tender websites information by states in Brazil.

For specific information on the public procurement in Brazil, access the directory “Business Organisations” of ELANbiz platform with contact details of the representative offices of the Member States of the EU, Binational Chamber of Commerce (when existing) and Trade promotion offices of Member States of the EU, which may report data Attorneys specializing in Public and Government Procurement. It’s I also highly encouraged to contact companies’ national organizations

Are European companies allowed to submit to public tenders in Brazil?

According wing Federal Law 8,666/93³ (and following amendments), Article 32, §4, specifies that “foreign companies that do not operate in the country and access to an international tender, shall, as far as possible, gather the equivalent documentation (which may be in the original language), authenticated by the respective consulates and translated by a sworn translator, they must also have legal representation in Brazil with notarial certificate to receive official summons and respond administratively or judicially."

Article 27 states that to enable bidders, stakeholders will be required of documentation relating to:

I - Legal capacity;
II - Technical qualification;

³ [http://www.planalto.gov.br/ccivil_03/Leis/L8666cons.htm](http://www.planalto.gov.br/ccivil_03/Leis/L8666cons.htm)
III - Economic and financial qualification;
IV - Fiscal and labor regularity; (Validity)
V - Compliance with the provisions of item XXXII of art. 7th of the Federal Constitution. (Included by Law No. 9,854, of 1999)

Therefore, it is concluded that European companies can submit to Public Tenders in Brazil, but in general, national public tenders obliges companies to be established in Brazil while international public tenders does not have this requirement.

How does the agreement with the EU improve the opportunities for European SMEs?

The Framework Agreement European Union - Mercosur signed in December 1995 (entered into force on July 1st, 1999) was the first step towards a future Association Agreement. To date, the parties are negotiating the details and controversies, so as to enable the signature of the agreement that will structure EU-MERCOSUR relations from the three traditional pillars: political, trade and cooperation dialogue.

On 11 May 2016, the EU and Mercosur exchanged offers for the first time since the re-launch, followed by a negotiation round in October 2016. The next round will be held in March 2017. The current negotiations cover a broad range of issues including:
- tariffs
- rules of origin
- technical barriers to trade
- sanitary and phytosanitary measures
- services
- government procurement
- intellectual property
- sustainable development
- small- and medium-sized enterprises

This free trade agreement will be part of the overall negotiation for a bi-regional Association Agreement which also comprises a political and a cooperation pillar. The EU offer foresees the opening of public procurement on goods, services and employment at central and local level, also including public companies. EU companies could still compete for a market valued at R$ 150 billion in government purchases and bids made by Brazil. On the other side, Mercosur, regarding public procurement, still negotiates a text that incorporates advances in this area, recorded in recent meetings.

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Mercosur has proposed a new text, which includes public procurement methods, applied by Mercosur⁶.

However, despite the importance of the issue, the process gradually entered into crisis: Mercosur considered very insufficient the EU agricultural offer; while the EU still considered unsatisfactory Mercosur concessions in services, investment and public procurement.

**Links of interest**

- Brazil Public Procurement Act 866  
- Fiscal Responsibility Law (LC 101/2000)  
- Announcement Tender mode  
- “Buy Brazilian Act”: LEY Nº 12.349, DE 15 DE DICIEMBRE DE 2010
- Federal Government Central Procurement portal (MDIC):  
  http://www.comprasgovernamentais.gov.br
- Municipalities Central Procurement portal: www.comprasnetmunicipios.com.br
- (São Paulo) BEC System – E-procurement portal: www.bec.sp.gov.br  
  (São Paulo City Council) E- Public-Business Portal:  
  http://e-negocioscidadesp.prefeitura.sp.gov.br/
- Minas Gerais: Procurement Portal MG: http://www.compras.mg.gov.br/
- CELIC – Central Tender Rio Grande do Sul: http://www.celic.rs.gov.br/  
  (Rio Grande do Sul) E-Procurement: http://www.compras.rs.gov.br/
- Santa Catarina: Procurement Portal: www.portaldecompras.sc.gov.br

• Bahia: Procurement-net Bahia: http://www.comprasnet.ba.gov.br/
• Ceará: Central Tender: http://www.portalcompras.ce.gov.br/
• Distrito Federal (Brasília): E-procurement portal: https://www.compras.df.gov.br/publico/
• Goiás: Central Procurement: http://www.comprasgovernamentais.gov.br/paginas/terceirizacao/estados/goias
• Maranhão Planning Secretariat http://www.seplan.ma.gov.br/pregoes-online/
• Mato Grosso do Sul: Procurement Portal: http://www.centraldecompras.ms.gov.br/
• Pará: Procurement Portal Pará: http://www.compraspara.pa.gov.br/
• Acre: Tender Portal of the state of Acre: http://www.licitacao.ac.gov.br/editais/index.php
• Alagoas: e-Government Public Procurement Alagoas: http://www.compras.al.gov.br/
• Amazonas: e-Procurement Amazon: https://www.e-compras.am.gov.br/publico/
• Paraíba: Central Procurement PB: http://www.centraldecompras.pb.gov.br/
• Rio Grande do Norte: Central http://servicos.searh.rn.gov.br/searh/Licitacao
• Rondônia: SUPEL – Superintendency of Tenders: http://www.rondonia.ro.gov.br/supel/
• Roraima: CPL, Permanente Committee on Tenders: http://www.portal.rr.gov.br/cpl/site/
• Sergipe: Net Procurement Portal SE: http://www.comprasnet.se.gov.br/

• Tocantins: Electronic procurement system:
  http://www.compras.to.gov.br/scripts/nwwcgi.exe/compras2/home

• Foreign trade and investment Guide
  http://www.investexportbrasil.gov.br/acordos-de-compras-governamentais

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