

ESG and the new Government Contracting Law

06.05.2021 2 min read

Authors

José Guilherme Berman

The new government contracting legislation does more than maintain ESG-related concerns: it expands the ESG agenda in public procurement

Related areas

Infrastructure and Regulatory &
Government Affairs

Topics

Corporate Governance
Compliance ESG COVID-19

Brazil's new Government Contracting Law, Law 14.133, was published on April 1, 2021. The new Law establishes general rules on competitive contracting procedures and government contracts, replacing Law 8666, which had been in force since 1993.

Even the earlier legislation, Law 8666/1993, addressed environmental, social and governance (ESG) concerns. For example, one of the principles applicable to government contracting was the promotion of sustainable development in Brazil, and there were specific requirements to ensure that the basic plans for projects contemplated the use of local materials and labor, compliance with technical and occupational health and safety standards, and the environmental impacts of the intended contract. ESG principles cannot be said to be a novelty in Brazilian legislation.

The new government contracting legislation, however, does more than maintain ESG-related concerns. As the examples below demonstrate, Law 14.133/2021 has expanded the ESG agenda in public procurement.

In environmental protection, Law 14.133/2021 does not require mere compliance with applicable legislation in government contracts: it also creates important incentives for companies that are interested in providing goods and services to the government to develop sustainability initiatives. Mitigation practices (reduction of GHG emissions) is one of the criteria for breaking ties between bidders on government contracts, and the legislation provides for the possibility of establishing variable compensation tied to achievement of environmental sustainability criteria.

Social concerns are also present in various provisions under Law 14.133/2021. For example, the contracting government agency can require that a certain percentage of bidders' workers be composed of women who were victims of domestic violence, or former prison inmates.

In addition, actions to promote gender equity between men and women is another of the criteria for breaking ties between bidders.

Law 14.133/2021 also contains mechanisms that encourage good corporate governance. Bidders on contracts worth more than BRL 200 million must have implemented compliance programs in their organizations, and adoption of a compliance program is another of the criteria used to break ties in competitive bidding procedures. In addition, when applying penalties, government authorities must take into account implementation and

improvement of compliance programs and, in some cases, companies that have been disqualified from bidding on government contracts can only requalify if they adopt compliance programs.

These provisions show that Law 14.133/2021 goes beyond requiring that companies interested in contracting with the government meet minimum legal requirements. The legislator has also created mechanisms to encourage adoption of practices that promote ESG principles, demonstrating that environmental, social and governance matters are now of fundamental importance for all businesses that have (or wish to obtain) contracts at the various levels of government in Brazil.

**This content is part of the e-book "A Post-Covid World, the ESG Agenda and Other Trends in 2021: Insights for Foreign Investors in Brazil". [Click here to view all the articles.](#)*

› PROFESSIONALS

Professionals who combine legal insight and market perspective



José Guilherme Berman