

Participation by International Bidders in Tenders under the new Brazilian Public Procurement Legislation

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Since January 1, 2024 and the repeal of Federal Law 8.666/1993, Federal Law 14.133/2021 is now the only legislation governing public procurement in Brazil. This article outlines how the new legislation deals with foreign bidders.

A key point is that Law 14.133 explicitly prohibits qualification, classification, or evaluation criteria in tender notices that can act as barriers to participation by international bidders – unless a domestic preference applies.¹

The table below compares the old and new legislation, highlighting the changes and their practical implications:

Law 8.666/93	Law 14.133/21
Foreign companies were required to participate through consortia led by a Brazilian company. ²	No restriction on consortia led by foreign companies.
Equivalent documents could be submitted, but had to be authenticated by the relevant consulate and translated by a Brazilian public translator. ³	The legislation does not specify how equivalent documents must be submitted, leaving the question to be dealt with by regulation. ⁴
Translations by a Brazilian public translator were required before the successful bidder was chosen.	An ordinary translation is required initially, and apostilled documents accompanied by a translation by a public translator are required only if the foreign company is the winning bidder. ⁵
Tax liabilities had to be based on the same taxes imposed on Brazilian bidders. ⁶	The tender notice will specify which taxes will apply to bids by foreign companies to ensure equal footing with Brazilian bidders. ⁷

In general, Federal Law 14.133/2021 offers more flexibility in the restrictions applicable to foreign bidders, by delegating regulatory authority to the Federal Executive and to the government authority that issues the tender notice. It also strengthens the principle of equal treatment of Brazilian and non-Brazilian companies.

Despite these changes, international bidders participating in Brazilian public

procurement tenders still face some challenges. Determining what foreign documents correspond to the required Brazilian documents, for example, remains a case-by-case process, since documentation varies from country to country.

NOTES

¹ Art. 52§6, Federal Law 14.133/2021.

² Art. 33§1, Federal Law 8.666/1993.

³ Art. 32§4, Federal Law 8.666/1993.

⁴ Art. 70, sole paragraph, Federal Law 14.133/2021.

⁵ According to art. 37 of SEGES/ME Instruction IN 73/2022, art. 34 of SEGES/ME Instruction IN 02/2023, and art. 44 of SEGES/ME Instruction IN 96/2022.

⁶ Art. 42§4, Federal Law 8.666/1993.

⁷ Art. 52, Federal Law 14.133/2021.

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