



Resolution No.72/2013 of the General Directorate of Procurement (GDP) that establishes the requirements for the registration of Consortiums in the Registry of State Suppliers (RSS)

On December 3rd, 2014 the GDP acting in accordance with Law 340-06 dated August 18th, 2006 on Procurement and Contracting of Goods, Services, Works and Concessions and its amendments of Law 449-06 dated December 6th, 2006, issued the Resolution No. 72/2013 establishing the requirements for the registration on the RSS of the consortiums that shall register at the RSS, while participating or being awarded a contract of a procurement process.

In accordance with Article 7 of Law 340-06, all natural or legal persons interested in participating in any procurement process must be registered in the RSS. Regarding consortiums, the Decree No.542-12 dated September 6th, 2012, establishing the Implementing Regulations of Law 340-06 (hereinafter the "Regulation") provides that the State may contract with Consortiums, meaning these temporary unions of companies whom, without constituting a new legal entity, are organized to participate in a procurement process. Likewise, the Regulation provides that legal persons forming part of the consortium shall be registered in the RSS.

Resolution 72/2013, in addition to the requirements for registration in the RSS of the Consortium, establishes a series of guidelines for the documents to be submitted when applying for registration, the requirements for maintenance the RSS of the consortium, among other aspects of relevance. Below is a summary of its main provisions:

Deadline for registration in the RPE of the Consortium: The registration of Consortium in the RSS is not required to participate in a procurement process. The Consortium should register only if have been awarded a contract from a procurement process, must apply for enrollment previous the execution of the contract within the ten (10) business days from the date of notification of the award. In line with the principle of equality and free competition established by Law 340-06, the indicated provision the same rules apply to foreign individuals or legal entities that are awarded a contract from a procurement process, whom are not required be registered to participate in a process but at the time of being awarded.

Consortium requirements for the Registration in the RSS: the Consortium to be registered in the RSS must submit the following documents to the GDP: (i) Complete the application form; (ii) Original Notarial Act by which the Consortium is formalized, including its purpose, the obligations of the parties, duration, exercise capacity of each member of the consortium and their generals; (iii) Certificate of Registration in the RSS of each of the legal entities that make up the Consortium; (iv) Evidence that all legal entities that make up the Consortium are currently up-to-date in the payment of their tax and social security obligations; and (v) Special Power of appointment of the representative or manager of the Consortium authorized by all companies participating in the Consortium. Legal entities that are part of the Consortium shall keep updated all documents that lose validity.

Resolution 72/213 does not require the consortium seeking inclusion in this RSS a number of National Register of Taxpayers (RNC) as a whole, when applying for registration. However, if awarded a contract from a procurement process, the Consortium must obtain the number of RNC so that the contracting entity could conduct the corresponding collection of taxes, retainers and all applicable tax deductions and turn the Consortium to fulfill its duties formal and taxpayer, if applicable.

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RSS Term of Consortium: Consortiums that have been dissolved, which incorporating agreement arrives to a term or that cease to exist will lose their RSS, which may subsequently be requested in accordance with the applicable requirements at the moment of request of the new application. Equally, the GDP has the power to cancel the RSS of a consortium in certain cases.

Penalties for non-registration of the Consortium in the RSS: Neither the Law 340-06 nor the Regulation provides sanctions to Consortiums that do not apply for registration in the RSS. However, in case of being awarded procurement process and not formalize the RSS, the consortium will not be entitled to sign the contract with the contracting entity.

Note: This document contains solely general information on the subset matter, therefore does not constitute a legal opinion by Russin Vecchi & Heredia Bonetti. It is recommended to seek legal advice for each particular matter.