

Projects & Procurement - Ecuador

Overview (September 2001)

Contributed by **Coronel & Pérez**

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International Airports
Telecommunications
Electricity

The Ecuadorian Political Constitution and the Government Modernization Law stipulate in Articles 429 and 6 respectively, that it is the government's responsibility to provide public services such as drinking and irrigation water, drainage, electrical power, telecommunications, highway administration and port facilities. The government can bear this responsibility directly or delegate it to private or mixed enterprises through concessions, associations, capitalization, share property transfer or any other contractual form in accordance with the law.

International Airports

Article 1 of the Civil Aviation Law states that it is the Ecuadorian government's responsibility to plan, regulate and control the airport and the civil airspace in the Ecuadorian territory. The construction, operation and maintenance of civil aerodromes, airports and heliports also fall within the government's responsibility.

By means of Executive Decrees 885 and 871, published at *Official Register* 198 on November 7 2000 and *Official Register* 186 on October 18 2000 respectively, the president of Ecuador authorized the Quito and Guayaquil municipalities to construct, administrate and maintain new international airports. These municipalities will either perform the necessary tasks directly or delegate them to private and mixed enterprises through concessions, associations, capitalization or any other contractual form in accordance with Article 249 of the Ecuadorian Political Constitution.

In order to accomplish the decree the municipalities of Quito and Guayaquil have constituted special entities: the Corporation for the Quito Airports and the Foundation Airport Authority of Guayaquil.

The bidding process has already begun with the support of the National Modernization Council. Those elected in the bidding process will construct, operate and maintain the existing and new airports in Guayaquil and Quito.

Telecommunications

The Telecommunications Special Law was designed to provide a legal framework for the regulation of telecommunications services in the national territory. Article 9 of the law stipulates that the government must regulate, monitor and control the telecommunications services in the country.

Since 1995 Pacifictel SA and Andinatel SA have been the companies in charge of providing the national telecommunications service. These companies are regulated and controlled by the following entities:

- the National Telecommunications Council, which is in charge of administration and regulation;
- the National Telecommunications Secretary, which is the political executive; and
- the Superintendence of Telecommunications, which is the controlling entity.

In early 2000 the Ecuadorian government made some decisions regarding the modernization of the telecommunications service.

Free competition

The Ecuadorian Economics Transformation Law published at *Official Register* 34 on March 13 2000, replaced Chapter 7 of the Telecommunications' Special Law, stipulating that all telecommunications services will be provided in free competition, avoiding monopolies, restrictive or abusive practices, and unfair competition, guaranteeing national security and promoting efficiency, universality, accessibility, continuity and quality of the services.

Public bidding

The government will offer public bidding to promote private investment in services based on the most advanced telecommunications technology by awarding frequency bands for mobile telecommunication services, broad band services and fixed cordless access. For this purpose the government issued regulations for concessions for the provision of telecommunications services in a free competition regime, which was published in *Official Register* 168 on September 21 2000.

On August 2 2001 the president of Ecuador presented the Ecuadorian opening model in telecommunications in the presence of approximately 260 representatives of national and international investment firms. The new communications enterprises could start operating by January 2002, after successful participation in the frequencies band bidding, which will start in late October 2001.

The privatization of Andinatel SA and Pacifictel SA

The government will transfer the administration of Andinatel SA and Pacifictel SA to private operators with international experience, through the sale of their shares or preferred rights. In accordance with the transitional provisions of the Telecommunications Special Law the share transfer to telecommunications companies or preferred rights to subscribe them will be developed through public competitive procedures, with a maximum investment of 51% possible.

Electricity

The electricity sector in Ecuador offers the investor much potential. Energy consumption is forecast to grow by an annual average of 7.6% for the next 10 years. This will be stimulated by the country's economic growth, which is expected to be 3.7% for 2001 and 4% for 2002. (The Economic Commission for Latin America and the Caribbean anticipates a growth of 5% in 2001.)

The government is stimulating the privatization process through legal reforms to the Electricity Sector Regime Law, which regulates and facilitates private investment in activities such as the generation, distribution, commercialization, transmission, import and export of electrical energy, allowing participation of 51% investment in the share capital owned by the solidarity fund.

The National Modernization Council is also involved in this privatization process and is advising the consortia led by the Salomon Smith Barney Inc Investment Bank, which is in the process of making a public offer for electrical enterprises. Until now only four international enterprises have delivered the pre-qualification document for the bidding of distributors, which will be made on September 28 2001.

The National Electricity Council must approve five regulations in the privatization. Two regulations were published on July 10 2001 at *Official Registry* 365. These regulations concern the import and export of energy and free access to transmission and distribution systems. The regulations on the environment and quality of service have yet to be published. The National Electricity Council and the Modernization Council of the Electricity Sector are still analyzing the anti-monopoly regulations.

These new legal regulations will allow agents of international players to connect to the national system of electrical energy transmission, either to take advantage of the energy in those periods when Ecuador has surplus to export or to sell energy to the country in low periods.

For further information on this topic please contact Xiomara Castro at Coronel & Pérez by telephone (+593 4 251 9900) or by fax (+593 4 232 0657) or by e-mail (xcastro@coronelyperez.com or xcastro@cypaboga.com.ec).

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