



## **Navigating the Brazilian Public Procurement Landscape: Opportunities for U.S. Companies under the New Bidding Law (Law No. 14,133/2021)**

**AUTHOR:** RICARDO RIBAS DA COSTA BERLOFFA. Professor, Attorney and Consultant. Specialist in Public Procurement and Administrative Contracts. Founding Partner of Route Consultoria em Licitações Públicas Ltda. Specialist in Constitutional Law. Professor of Administrative Law. Former Professor of Administrative Law at Damásio de Jesus Legal Complex, EPD – Escola Paulista de Direito, LEX Cursos Jurídicos, and Universidade Bandeirante de São Paulo – UNIBAN. Former Executive Secretary of the São Paulo State Regulatory Agency for Sanitation and Energy – ARSESP, and Chief of Staff and Legal Advisor of the São Paulo State Public Services Commission – CSPE. Former member of Permanent and Special Bidding Commissions and Auctioneer for the State of São Paulo. Author of the books “*Procedimento Sumaríssimo (Comentários à Lei nº 9.957/2000)*”, “*Manual de Licitações Públicas – Uma abordagem prática e sem mistérios*”, “*A nova modalidade de Licitação: Pregão*”, “*A modalidade de licitação Pregão – Uma análise dos procedimentos dos Pregões Presencial e Eletrônico*”, “*Introdução ao Curso de Teoria Geral do Estado e Ciências Políticas*”, and “*Licitações com Micros e Pequenas Empresas*”. Owner of the social media channels: Instagram @prof.ricardo.ribas and YouTube Professor Ricardo Ribas.

### **Abstract**

This article analyzes the opportunities and challenges for U.S. companies in the Brazilian public procurement landscape under the New Bidding Law (Law No. 14,133/2021). This legislation, which modernizes and streamlines the Brazilian bidding system, aims to foster greater competition and attract foreign investment. The paper discusses the main innovations of Law No. 14,133/2021 that facilitate foreign company participation, market opportunities across various sectors, and the challenges to overcome, such as legal and regulatory adaptation, cultural and business environment, and tax and financial aspects. The article offers strategic recommendations for U.S. companies seeking to successfully engage in the Brazilian public sector, highlighting the importance of specialized consulting, market understanding, and robust compliance programs. It concludes that, with careful planning and strategic partnerships, U.S. companies are well positioned to seize the growth potential in the dynamic Brazilian market.

**Keywords:** Brazilian Public Procurement; New Bidding Law; Law No. 14,133/2021; Foreign Companies; International Bidding; Investment Opportunities; Brazil.



## 1. Introduction

The global economic landscape is increasingly interconnected, presenting both unprecedented challenges and opportunities for companies seeking to expand their reach beyond national borders. For U.S. companies, the Brazilian market—with its vast consumer base and significant public investment—represents a particularly attractive frontier.

Brazil, as the largest economy in Latin America, consistently engages in substantial public procurement activities across various sectors, ranging from infrastructure and healthcare to technology and defense.

Historically, navigating the complexities of Brazilian public procurement has been a challenging task for foreign entities, often characterized by intricate legal frameworks, bureaucratic hurdles, and a perception of lack of transparency. However, a transformative shift occurred with the enactment of Law No. 14,133 of April 1, 2021, which established new general rules for public bidding and administrative contracts.

This landmark legislation, known as the New Bidding Law (NBL), aims to modernize, simplify, and enhance the efficiency and integrity of public procurement processes in Brazil, replacing the former Laws No. 8,666/93 and No. 10,520/02 (the “Pregão” Law).

The NBL introduces a series of innovations designed to foster greater competition, promote technological advancement, and attract private investment, including from international players. For U.S. companies, understanding these changes is crucial to unlocking the immense potential that the Brazilian public sector offers.

This article aims to provide a comprehensive analysis of the opportunities and challenges that the NBL presents for U.S. companies, offering insights into the main provisions that facilitate foreign participation and strategic recommendations for successful engagement in Brazil’s government contracting landscape. By clarifying the nuances of this new legal framework, we seek to empower U.S. companies to confidently explore and capitalize on the growing prospects within Brazil’s government contracting arena.

## 2. The Brazilian Public Procurement System: An Overview

Brazil’s public procurement system has undergone significant evolution, reflecting the country’s commitment to transparency, efficiency, and accountability in the



allocation of public resources. Before the NBL, the main legal frameworks governing public procurement were Law No. 8,666/93, often referred to as the General Bidding Law, and Law No. 10,520/02, which introduced electronic bidding (*pregão eletrônico*). While these laws served their purpose for decades, they were often criticized for their complexity, bureaucratic procedures, and susceptibility to inefficiencies and corruption.

Law No. 8,666/93, enacted in 1993, established comprehensive rules for public works, services, procurement, and disposals. It emphasized formal procedures, strict adherence to legal requirements, and a strong focus on the lowest-price criterion. However, its rigid structure often led to delays, increased costs, and limited innovation in public contracts. Electronic bidding, introduced by Law No. 10,520/02 in 2002, aimed to simplify the acquisition of common goods and services, promoting greater agility and price competitiveness through online bidding.

The transition to Law No. 14,133/2021 marks a crucial moment in Brazilian public procurement. The NBL consolidates and updates existing legislation, incorporating best practices and addressing the shortcomings of the previous laws. It introduces a coexistence period, allowing public entities to choose between the old laws and the new one until December 30, 2023, after which the NBL will become the sole legal framework for public procurement in Brazil. This transition period provides an opportunity for both public entities and private companies to adapt to the new rules and procedures.

### **3. Key Innovations of Law No. 14,133/2021 Relevant to Foreign Companies**

The New Bidding Law (NBL) introduces a series of significant innovations that directly impact and, in many cases, facilitate the participation of foreign companies in Brazilian public procurement. These changes reflect a broader effort to align Brazil's procurement practices with international standards, promoting greater efficiency, transparency, and competitiveness.

#### **3.1. Modernization and Simplification of Procedures**

One of the main objectives of the NBL is to modernize and simplify procurement procedures. The law establishes a preference for electronic bidding modalities, particularly *pregão eletrônico*, which is now the standard mode for acquiring common goods and services. This



emphasis on digital platforms increases accessibility for foreign companies, as it reduces the need for physical presence and streamlines the bidding process. The NBL also introduces the *competitive dialogue* as a new bidding modality, designed for complex projects where the Administration needs to discuss technical solutions with potential suppliers before defining final requirements.

This collaborative approach can be particularly beneficial for foreign companies offering innovative or highly specialized solutions, allowing them to engage directly with the public sector to tailor their proposals.

Additionally, the NBL promotes the use of advanced technological resources, such as artificial intelligence and data analytics, to improve the planning, execution, and oversight of procurement. This digital transformation aims to enhance efficiency, reduce administrative burdens, and improve overall transparency in the process, making it more attractive and manageable for international participants.

### 3.2. Focus on Efficiency and Results

The NBL shifts the focus from the mere acquisition of goods and services at the lowest price to achieving the best cost-benefit and ensuring effective results. This is reflected in the expanded criteria for evaluating proposals, which now include considerations beyond price, such as:

- Greater economic return: Encouraging solutions that offer long-term cost savings or generate revenue for the public administration.
- Better technical merit or artistic content: Valuing technical quality, innovation, and artistic merit in specific contexts.

This broader evaluation approach allows foreign companies—often recognized for their technological prowess, innovative solutions, and high-quality products—to compete more effectively on factors beyond price alone.

The NBL also introduces the concept of *performance-based contracts*, where payment is tied to the achievement of specific and measurable outcomes. This incentivizes



suppliers to deliver high-quality results and can be particularly attractive to foreign companies confident in their ability to meet performance targets.

### 3.3. Enhanced Integrity and Governance

Recognizing the importance of combating corruption and promoting ethical conduct, the NBL significantly strengthens integrity and governance mechanisms. It requires the implementation of *integrity programs* (or compliance programs) for certain types of contracts, particularly those involving high values or complex operations. These programs require companies to establish internal controls, codes of ethics, and training initiatives to prevent and detect unlawful acts.

For U.S. companies, which typically operate under strict anti-corruption laws such as the Foreign Corrupt Practices Act (FCPA), this emphasis on compliance aligns well with their existing internal policies and may provide a competitive advantage.

The NBL also introduces new classifications of crimes and administrative offenses related to public procurement, increasing the severity of penalties for unlawful conduct. This reinforces the commitment to a fair and transparent bidding environment, providing greater assurance to foreign investors that their participation will be governed by strict ethical standards.

### 3.4. International Bidding and Foreign Company Participation

Perhaps the most direct and impactful innovations for foreign companies are those related to international bidding. The NBL explicitly addresses and facilitates the participation of foreign entities, providing a clearer legal framework for their involvement:

- **Clear Definition of International Bidding:** Article 6, item XXXV, of the NBL defines *international bidding* as a procurement process conducted in national territory in which foreign bidders are admitted, with the possibility of submitting proposals in foreign currency and receiving payments from abroad. This clear definition removes ambiguities and paves the way for more frequent international bidding.



- **Possibility of Payment in Foreign Currency:** Article 5 allows proposals to be submitted and payments to be made in foreign currency, subject to specific conditions and regulations. This provision significantly reduces exchange rate risks for foreign companies, making participation more financially viable and predictable.

- **Qualification Requirements for Foreign Companies Without Operations in Brazil:** The NBL simplifies the documentation requirements for foreign companies that do not have a permanent establishment or operations in Brazil. Articles 67 and 70 stipulate that such companies may submit equivalent documents, in accordance with regulations issued by the federal Executive Branch.

This flexibility acknowledges the different legal and administrative structures of foreign entities, alleviating the burden of complying with Brazilian bureaucratic requirements.

- **Flexibility for Consortia with Foreign Companies:** The NBL encourages the formation of consortia, including those involving foreign companies. This facilitates strategic partnerships between international and local companies, allowing them to combine expertise, share risks, and enhance their competitive advantage in complex projects. The law provides greater flexibility in the rules governing consortia, making them a more attractive vehicle for foreign participation.

These provisions, taken together, signal Brazil's commitment to opening its public procurement market to international competition, recognizing the benefits that foreign expertise, technology, and investment can bring to the country's development. For U.S. companies, these innovations translate into a more accessible, transparent, and potentially profitable environment for engaging with the Brazilian government.

#### **4. Opportunities for U.S. Companies in the Brazilian Market**

The New Bidding Law (NBL) creates a more favorable environment for foreign participation, opening significant opportunities for U.S. companies seeking to expand their operations into the vibrant Brazilian market. These opportunities stem from a combination of Brazil's economic characteristics and the specific provisions of the NBL.




## 4.1. Access to a Large and Growing Market

Brazil has the largest economy in Latin America and a population of over 200 million, making it a substantial market for goods and services. The Brazilian government is a major purchaser across multiple sectors, investing heavily in infrastructure, healthcare, education, defense, and technology. This consistent demand for public services and infrastructure projects presents a vast addressable market for U.S. companies.

Sectors with particularly high demand for advanced products and innovative solutions—where U.S. companies often hold a competitive edge—include:

- **Infrastructure:** Roads, railways, ports, airports, and urban mobility projects are in constant demand, driven by the need to improve logistics and connectivity across Brazil's vast territory.
- **Healthcare:** Public health systems require ongoing investment in medical equipment, pharmaceuticals, and specialized services.
- **Information Technology:** Digital transformation initiatives in government agencies create opportunities for software, hardware, cybersecurity, and cloud computing solutions.
- **Energy:** Brazil's diverse energy matrix, including renewable sources, offers prospects in generation, transmission, and distribution projects.
- **Defense:** Modernization of the armed forces often involves the acquisition of advanced defense systems and technologies.

To illustrate, the projected public procurement spending in Brazil for the year 2025 exceeds the equivalent of 3 trillion Brazilian reais.

 PORTAL NACIONAL DE CONTRATAÇÕES PÚBLICAS	Total Estimado R\$ 3.345.889.160.877,38	Contratações <b>2.236.989</b>	Quant. de itens 23.594.454	Sistemas 253
	CONTRATAÇÕES / ALIENAÇÕES - PUBLICADAS			dados atualizados em: 04/07/2025





## 4.2. Greater Transparency and Predictability

The NBL's emphasis on digital platforms, standardized procedures, and clear rules significantly increases transparency and predictability in Brazilian public procurement. For U.S. companies accustomed to robust regulatory environments, this enhanced clarity reduces perceived risks and facilitates strategic planning.

The mandatory use of electronic bidding systems, for example, ensures that all participants have access to the same information simultaneously, minimizing opportunities for undue influence or favoritism.

This transparency fosters a more level playing field, allowing companies to compete based on merit and the quality of their proposals, rather than informal connections or opaque processes.

## 4.3. Level Playing Field

One of the most crucial aspects of the NBL for foreign companies is its explicit commitment to non-discrimination. The law, in principle, prohibits discrimination between Brazilian and foreign bidders, ensuring that all participants are evaluated based on objective criteria.

While certain legal exceptions may exist (e.g., for national security or specific industrial policies), the general rule is that the focus remains on competitiveness and obtaining the best proposal for the public administration.

This commitment to a level playing field means that U.S. companies can leverage their technological superiority, efficiency, and experience to effectively compete against local and other international players.

## 4.4. Strategic Partnerships and Joint Ventures





The NBL encourages the formation of consortia, which can be a highly effective strategy for U.S. companies entering the Brazilian market. Partnering with Brazilian companies allows U.S. firms to:

- **Navigate local regulations:** Brazilian partners can provide invaluable insights into the local legal, tax, and administrative landscape.
- **Access local networks:** Established relationships with local suppliers, labor, and government entities can streamline operations.
- **Share risks:** Complex and large-scale projects often involve significant risks, which can be mitigated through shared responsibility within a consortium.
- **Facilitate technology transfer:** Joint ventures can serve as a vehicle for transferring advanced technologies and know-how to Brazil, fostering local development and creating new business opportunities.

This collaborative approach not only enhances the competitiveness of U.S. companies in specific bids but also contributes to building long-term relationships and a sustainable presence in the Brazilian market.

## **5. Challenges and Considerations for U.S. Companies**

Although the New Bidding Law (NBL) presents significant opportunities, U.S. companies must also be prepared to navigate a series of challenges and considerations inherent to the Brazilian business environment. A proactive and well-informed approach is crucial to mitigating risks and ensuring long-term success.

### **5.1. Legal and Regulatory Adaptation**



Despite the NBL's efforts to simplify and modernize procurement, Brazil's legal and regulatory landscape remains complex. U.S. companies should invest in a thorough understanding of the NBL and its many implementing regulations, which are continuously being developed and updated. Key areas of focus include:

- **Qualification Documents:** Ensuring that all required legal, technical, and financial documents are properly prepared, translated, and authenticated to meet Brazilian standards. The concept of "equivalent documents" for foreign companies requires careful interpretation and may vary depending on the specific bidding process.
- **Contractual Provisions:** Brazilian administrative contracts include specific clauses and legal requirements that may differ from those in the United States. Understanding these nuances is essential for managing contractual obligations and risks.
- **Dispute Resolution:** The NBL provides for several dispute resolution mechanisms, including administrative appeals, arbitration, and judicial review. U.S. companies should be familiar with these options and have a clear strategy for addressing potential conflicts.

## 5.2. Tax and Financial Aspects

Brazil's tax system is notoriously complex, with a multitude of federal, state, and municipal taxes that can impact the cost of doing business. U.S. companies should carefully assess the tax implications of their operations, including:

- **Import Taxes:** The importation of goods and services is subject to various taxes, such as the Import Duty (II), Tax on Industrialized Products (IPI), and Tax on the Circulation of Goods and Services (ICMS).
- **Corporate Income Taxes:** Companies operating in Brazil are subject to Corporate Income Tax (IRPJ) and the Social Contribution on Net Income (CSLL).
- **Withholding Taxes:** Payments to foreign entities may be subject to withholding taxes.



In addition to tax considerations, U.S. companies must also manage financial risks, particularly those related to currency fluctuations. The Brazilian Real (BRL) can be volatile, and companies should develop strategies to hedge against exchange rate risk, especially for long-term contracts.

### 5.3. Compliance and Anti-Corruption

Brazil has made significant progress in combating corruption, with robust anti-corruption laws such as Law No. 12,846/2013. The NBL reinforces this commitment by requiring integrity programs and imposing severe penalties for unlawful conduct.

U.S. companies must ensure that their operations are fully compliant with both Brazilian and U.S. anti-corruption laws, such as the Foreign Corrupt Practices Act (FCPA). This requires:

- **Robust Compliance Programs:** Implementing comprehensive compliance programs that include risk assessments, third-party due diligence, employee training, and internal controls.
- **Zero-Tolerance Policy:** Adopting a zero-tolerance policy toward bribery and corruption at all levels of the organization.
- **Transparency and Accountability:** Maintaining transparent records and ensuring accountability for all business transactions.

By proactively addressing these challenges, U.S. companies can position themselves for success in Brazil's public procurement market, leveraging the opportunities created by the NBL while mitigating potential risks.

## 6. Recommendations for U.S. Companies



To successfully navigate the Brazilian public procurement landscape under the New Bidding Law (NBL) and capitalize on emerging opportunities, U.S. companies should consider implementing the following strategic recommendations:

## 6.1. Seek Specialized Legal and Business Advisory

Given the complexities of Brazilian law and the nuances of its business environment, engaging experienced legal and business advisory services is paramount. Companies should partner with law firms and consultants who possess deep knowledge of Brazilian public procurement regulations, particularly the NBL, and a proven track record of assisting foreign entities. This specialized expertise can provide invaluable guidance on:

- **Regulatory Compliance:** Ensuring that all proposals and documentation are strictly in compliance with Brazilian legal requirements.
- **Contract Negotiation:** Understanding and negotiating the specific terms and conditions of administrative contracts.
- **Risk Management:** Identifying and mitigating legal, financial, and operational risks associated with Brazilian public projects.
- **Dispute Resolution:** Advising on the most effective strategies for resolving potential conflicts.

## 6.2. Understand the Brazilian Market

A deep understanding of the Brazilian market is crucial to identifying the most promising opportunities and developing competitive strategies. U.S. companies should conduct thorough market research to:

- **Identify Demands:** Identify specific government needs and upcoming projects that align with their core competencies.



- Analyze the Competition: Assess the competitive landscape, including local and international players.
- Evaluate Local Content Requirements: Understand any preferences or requirements for local content or labor, which may influence bidding strategies.
- Monitor Public Budgets: Track government spending patterns and budget allocations in relevant sectors to anticipate future procurement needs.

### 6.3. Consider Local Presence or Partnerships

While the NBL facilitates direct participation, establishing a local presence or forming strategic partnerships with Brazilian companies can significantly enhance competitiveness and operational efficiency. Options include:

- Opening a Subsidiary: A direct presence can demonstrate long-term commitment and facilitate local operations.
- Forming Consortia or Joint Ventures: Collaborating with Brazilian companies can provide access to local knowledge, networks, and resources while sharing risks and responsibilities.
- Appointing a Local Representative: A qualified local representative can manage daily interactions with government agencies and ensure timely compliance with administrative requirements.

### 6.5. Monitor Regulatory Updates

The NBL is a relatively new law, and its implementation is an ongoing process. New regulations, decrees, and interpretations from government agencies and courts are continually emerging. U.S. companies should actively monitor these regulatory updates to ensure continued compliance and adapt their strategies accordingly. Subscribing to legal newsletters, participating in industry associations, and maintaining close contact with local advisors are effective ways to stay informed.



By proactively adopting these recommendations, U.S. companies can significantly improve their prospects for success in the Brazilian public procurement market, turning potential challenges into valuable opportunities for growth and expansion.

## 7. Conclusion

The enactment of Law No. 14,133/2021 marks a new era for public procurement in Brazil, characterized by a renewed commitment to transparency, efficiency, and international engagement. For U.S. companies, this legislative overhaul presents an attractive landscape of opportunities to participate in a large and growing market driven by significant public investments in critical sectors.

The innovations of the NBL—such as the clear definition of international bidding, the possibility of payments in foreign currency, and simplified qualification requirements for foreign entities—significantly reduce barriers to entry. Furthermore, the law’s emphasis on efficiency, performance-based contracts, and enhanced integrity measures creates a more predictable and reliable environment for international companies.

However, capitalizing on these opportunities requires a strategic and informed approach. U.S. companies must be prepared to navigate the complexities of Brazil’s legal and tax systems, understand the local business culture, and maintain robust compliance programs.

By seeking specialized legal and business advisory, conducting thorough market research, considering local partnerships, and diligently monitoring regulatory updates, U.S. companies can effectively mitigate potential challenges and unlock the full potential of the Brazilian public procurement market.

In conclusion, Brazil’s public procurement landscape, reshaped by the New Bidding Law, is rich with possibilities for U.S. companies. With careful planning, strategic partnerships, and a commitment to understanding the local context, U.S. firms are well positioned to secure valuable contracts, contribute to Brazil’s development, and achieve sustainable growth in this dynamic South American economy.



(The author of this article is an attorney duly registered with the Brazilian Bar Association (OAB/SP). He is also the founder and managing partner of a consulting firm that has been exclusively dedicated to public procurement and administrative contracts in Brazil for 25 years. With this extensive experience and deep expertise in the field, he is fully capable of advising U.S. companies on navigating Brazilian bidding and contracting procedures, providing them with strategic guidance, and adequately representing their interests before public entities and in all stages of the procurement process.)

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