



CHILE - UPCOMING HOSPITAL PUBLIC-PRIVATE PARTNERSHIP PROGRAM

After delays due to the COVID-19 crisis, the Chilean Ministry of Public Works ("MOP") has announced that a group of hospital projects in the Maule region, the first of ten hospital group projects to be tendered and developed under Chile's new hospital infrastructure concession program (the "Program"), will be awarded by the end of the second quarter of 2020. The Program encompasses the construction and supply of medical and non-medical equipment for a total of 18 hospitals with an overall capex of approximately US\$2 billion. The Program has been divided into ten groups of one or more hospitals which will be tendered separately over the next few years (see Annex I below). Each hospital group will be tendered as a package, and there is no limit to a sponsor being awarded more than one group of hospitals; a circumstance which could allow for portfolio financings, including bond financings.

Continuation of Successful Healthcare Concession Programs

The Program follows previous healthcare concession programs in the country. Chile's pilot hospital endeavor began in 2009 with the La Florida and Maipu hospitals, and subsequent tenders for other hospitals in 2012 and 2014 have since completed construction. All of those programs were issued under a similar design, build, finance, operate and maintain (DBFOM) model and provided for concession terms of 15 years from the initiation of operations. With the exception of the pilot program, those concessions also included the provision of non-medical services for the procurement, reposition, administration and maintenance of major medical and other non-medical equipment. These features are also a part of the Program.

The legal framework for these concessions has remained largely unchanged. Chile's PPP legislation does not provide for the execution of a formal concession agreement between the MOP and the concessionaire; instead, the publication of

the concession award decree in the Chilean Official Gazette formalizes the PPP contract with the concessionaire, and the content of that contract is composed of (a) MOP Decree with Force of Law No. 164 of 1991 (the "Chilean Public Works Concession Law"), (b) the law's administrative regulation issued by the MOP, (c) the pre-qualification terms (*bases de precalificación*), (d) the general terms and conditions for the tender of the entire hospital program (*bases de licitación tipo de hospitales*), (e) the special terms and conditions for each hospital group (*anexos complementarios*), (f) each administrative clarification which may be issued to any of the terms and conditions (*circulares aclaratorias*), (g) the terms of the concessionaire's economic and technical offer, and (h) the concession award decree for each hospital group.

The Chilean Public Works Concession Law safeguards the rights of concessionaires, stipulating that the terms of their contracts cannot be unilaterally modified by any governmental authority. Future changes in law affecting the Chilean Public Concession Law could alter these rights, although it is common for changes of that sort to grandfather in rights previously granted to existing concessionaires. Even without a change in law, the Chilean Public Works Concession Law permits the MOP to unilaterally request additional works up to 15% of the estimated official budget of each project. It also permits the Chilean President, based on a public interest requirement and with a prior report issued by the Concessions Council (composed of six technical and political experts created by the Chilean Public Works Concession Law to inform and advise the MOP) to trigger the early termination of a contract during its construction phase when a change in circumstances either renders the project useless for public use or requires its re-design or change in amounts in excess of 25% of its estimated official budget. In the case of such unilateral termination, the concessionaire will receive a termination payment equal to the amount of investments effectively made, excluding financing expenses, in accordance with a formula included in the Program's general terms and conditions.

Payment Mechanisms

The Program sets forth various revenue streams to the concessionaires and also includes certain payments to be made by the concessionaires to various government entities. These payments are expressed in Chilean Units of Accounts (*Unidades de Fomento*) ("UFs") which adjust for inflation on a daily basis. Actual payment amounts are to be converted from UFs to Chilean Pesos on the dates set forth in the Program's general terms and conditions.

Payments by the MOP to the concessionaires

Revenues consist of both fixed payments and variable payments. The fixed payments are: (i) construction subsidy payments to be made on a semi-annual basis over the course of 10 years starting on the date the project begins operations, (ii) operation subsidy payments to be made on a semi-annual basis over the course of 15 years starting on the date the project begins operations, (iii) subsidy payments for acquisition and replacement of non-clinical equipment to be made annually during the construction and operation phases, and (iv) subsidy payments for acquisition and replacement of clinical equipment to be made annually during the construction and operation phases.

The variable payments depend on the level of occupancy of the beds in each hospital and will be made annually over 15 years starting on the date the project begins operations. Variable payments for each hospital also incorporate a performance-based incentive factor based on the most recent evaluation of the level of service quality at such hospital as determined by an oversight committee using a formula set forth in the Program's general terms and conditions. An additional conditional variable payment will be made if on any year demand for beds exceeds 110% of a hospital's capacity per day, which payment is to be made on the immediately following year.

Payments by the concessionaires to the MOP or to the applicable health service establishment

Concessionaires must make both fixed payments and variable payments under their concessions. They must make a series of fixed payments to the MOP during the construction and operation phases for the purposes of administration and oversight of the PPP contracts. The variable payments which concessionaires must make are: (i) utilities expenses for each hospital, and (ii) the remaining balances at the end of each fiscal year on any reserve accounts (*fondos de reserva*) set forth for each hospital group, in accordance with the special terms and conditions thereof.

Risks Allocated to Concessionaires

Given that the bulk of the payments to the concessionaires will only be made once construction is completed, the concessionaires assume all construction risk associated with the projects. Similarly, it is the concessionaires' responsibility to obtain all environmental and construction permits, as well as any other permits and authorizations. Delivery of the corresponding land for construction will only take place after all permits and authorizations have been obtained, and consequently the possibility of delays in the commencement of construction should be taken into account for financing purposes. It should be noted that these are the same issues encountered in the previous hospital programs and are risks commonly allocated to concessionaires in other Chilean PPPs.

The Bottom Line

The Program represents a new step in the continuation of Chile's hospital PPP development, without making substantial changes from its predecessors, except that its scope in terms of the number of projects being tendered under the Program, as well as the significance of the investment requirements, provide a level of foreseeability to sponsors, finance parties and the Chilean population as a whole, that was not present in previous programs. The fact that its US\$2 billion capex amount is divided into ten separate groups of hospitals means that a variety of interested sponsors and financing parties will have an opportunity to participate in the Program's tenders over the next couple of years.

Annex I

Hospital Group	Hospital Name	Capex (US\$)	Estimated Tender Timeline
Maule Network	Cauquenes	244 million	Economic bids opening August 4, 2020
	Constitución		
	Parral		
Bío Bío Network	Santa Bárbara	360 million	3Q-4Q 2020
	Nacimiento		
	Coronel		
	Lota		
Buin-Paine	Buin-Paine	120 million	Economic bids opening August 7, 2020
O'Higgins Network	Rengo	170 million	2Q 2021
	Pichilemu		
Valdivia Network	La Unión	180 million	4Q 2020 – 1Q 2021
	Río Bueno		
	Los Lagos		
Coquimbo	Coquimbo	300 million	3Q-4Q 2020
La Serena	La Serena	300 million	1Q 2021
Zona Norte - Metropolitana	Zona Norte - Metropolitana	230 million	3Q 2021
Instituto Nacional del Cancer	Instituto Nacional del Cancer	260 million	2Q 2021
Instituto Nacional de Neurocirugía	Instituto Nacional de Neurocirugía	190 million	2Q 2022

CONTACTS

Gianluca Bacchiocchi
Partner

T +1 212 878 8467
E gianluca.bacchiocchi
@cliffordchance.com

Guido Liniado
Partner

T +1 212 878 3182
E guido.liniado
@cliffordchance.com

Alberto Haito
Associate

T +1 202 912 5084
E alberto.haito
@cliffordchance.com

Jessica Springsteen
Associate

T +1 202 912 5008
E jessica.springsteen
@cliffordchance.com

Mariana Estévez
Associate

T +1 212 878 8251
E mariana.estevez
@cliffordchance.com

Nicolas Ocampo
Associate

T +1 212 878 4936
E nicolas.ocampo
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 31 West 52nd Street, New York, NY 10019-6131, USA

© Clifford Chance 2020

Clifford Chance US LLP

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.