

PRIVATE WATER IN BRAZIL

Brazil's water sector cooled by new decrees

Two decrees signed by president Lula da Silva could delay universalisation and limit private sector participation to partial concessions. The private sector is fighting back.

Brazil's left-leaning president Lula da Silva has signed two decrees amending the 2020 sanitation law, which will allow certain regional blocs to award water and sanitation contracts to state-owned utilities without going through competitive tendering.

The decrees, which were signed on 5th April, will apply to microregions and metropolitan regions, which are home to more than 85% of Brazil's population. It is a major setback for private sector participation in the country, which has flourished under the sanitation legislation.

The 2020 law mandated that water and wastewater services be tendered through an open and competitive bidding process. Since then, several concession contracts have been tendered by Brazil's development bank BNDES, with a total of BRL46.4 billion (\$9.4 billion) of investments committed to reaching the national universalisation goal by 2033.

Percy Neto, executive president of private water sector association Abcon, told GWI that the decrees are already

being challenged. In January, Abcon filed a Direct Action of Unconstitutionality against the state of Paraíba, which had allowed contract awards without a bidding process even before the decrees were made. Political party Partido Novo (New Party) has since appealed to the Supreme Court against the two decrees, arguing that they are in violation of the constitution.

Marcelo Marchetti, a lawyer with Toledo Marchetti, said that the decrees increase legal insecurity because contracts awarded without a tender could eventually be considered 'irregular'. He argues that they also undermine the country's universalisation goals: one of the main features of the decrees was to extend the deadline for state-owned utilities to submit proof of their financial capacity to deliver universalisation to regulators out to 31 December 2023. Regulatory agencies will now have until 31 March 2025 to deliver their rulings.

"Historically, flexibilities are not used to resolve issues – they only serve to postpone them," Marchetti told GWI. "The deadline was short already, and by making

it more flexible, the chance of missing the targets increases even more."

While Lula's goal is to curb the enthusiasm for full concessions, he is keen to keep the private sector involved to help state-owned utilities. The middle ground is partial concessions, whereby state-owned utilities bid out part of their operations, usually wastewater collection and treatment services, to the private sector. The new decrees scrap the previous 25% limit of sub-delegating operations, one of the few changes that both the private and public sectors applaud. But partial concessions come with downsides, too: sub-delegations tend to duplicate administrative operations and thus increase the cost to users, which Lula's voters are unlikely to welcome.

Despite the legal insecurity brought about by the new decrees, Neto said that he is confident the universalisation agenda would be upheld. "It is very difficult politically today for someone not to invest in water and sanitation," he said. "Politicians have to explain to the population if they don't want to carry on with that." ■

COLOMBIA

Bogotá releases long-awaited RFQ for Canoas WWTP

Latin America's second-largest wastewater treatment plant has been a long time coming. How will it be financed?

Bogotá's water and sanitation utility Empresa de Acueducto y Alcantarillado de Bogotá (EAAB) released a request for statements of qualifications late last month for the long-awaited 1,382,400m³/d Canoas wastewater treatment plant.

The facility, which will be the second largest of its kind in Latin America and is due to be procured under an eight-year build-operate-transfer (BOT) contract, has been beset by institutional delays for the past 12 years.

"Achieving Canoas has been a challenge because it has involved high-level coordination at the institutional level [and] several institutions in the financing of the plant," EAAB general manager Cristina Arango told GWI. The client has also had to contend with a 20% deprecia-

tion of the Colombian peso against the US dollar in the last year.

The flagship \$1.5 billion project will treat 70% of Bogotá's wastewater, and although Arango would not be drawn on the role of private finance in the project, GWI understands that the private sector will be expected to finance around 50% of the capital cost through a mixture of debt and equity.

On the public financing side, the project will be co-financed by local and provincial governments, and by the regional environmental authority (CAR). EAAB has secured a \$700 million loan from the World Bank and the Development Bank of Latin America (CAF) – backed by Colombia's national government – to cover the initial capex costs.

Eight years is unusually short for a

BOT, but EAAB said it had opted for the shorter duration to reduce the risk of contract renegotiation common in longer concessions. GWI also understands that the shorter contract is likely to help assuage union fears over privatisation.

Ignacio López Mier, Acciona Agua's business development director for the Americas, told GWI that they would have preferred a longer O&M contract, but that the project is still an attractive opportunity. "There is no other sanitation project of this magnitude in the world," he said.

López Mier added that Acciona Agua would participate in the tender. "This is a flagship project and 100% our core business. We are one of the key players in all the major wastewater treatment plants in the region." ■