Brigard Urrutia

Where is Colombia's Infrastructure going to?
哥伦比亚的基础建设将走向何方?

July 2020

Summary

1 Framework of the State of Emergency and the Decrees issued by the National Government

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1 Framework of the State of Emergency and the Decrees issued by the National Government

States of Emergency

(Arts. 212-215 of the Colombian Constitution)

External War (Art. 212)

By means of said declaration, the Government shall have the powers strictly necessary to repel aggression, defend the sovereignty, respond to the requirements of war, and pursue the re-establishment of normality.

State of Internal Commotion (Art. 213)

In the event of serious disturbance of public order that imminently threatens institutional stability, State security, or citizen harmony, and cannot be averted through the ordinary powers of the police authorities.

National Emergency (Art. 215)

When events other than those referred to in articles 212 and 213 occur and seriously and imminently disrupt or threaten to disrupt the economic, social and ecological order of the country, or constitute a serious public calamity, the President may, with the signature of all ministers, declare a national emergency for periods of up to 30 days in each case, which in summary may not exceed 90 days in the calendar year.

National Emergency and Legislative Decrees

National Emergency (Art. 215)

- ✓ The decrees issued under the declaration of this State shall have the exclusive purpose of **mitigating the crisis** and must be signed by all ministers.
- ✓ This declaration must be supported, the President may, with the signature of all ministers, issue **decrees having the force of law**, aimed exclusively at resolving the crisis and preventing the spread of its effects.
- ✓ These powers are exceptional, and the decrees are only issued in the context of a state of emergency.

First Declaration of the State of Emergency

Decree 417 of 2020 (20th of March)

= **73** **Legislative Decrees**

Second Declaration of the State of Emergency

Decree 637 of 2020 (6th of May)

= **36** **Legislative Decrees**

Term of the Legislative Decrees

Construed rules of the Constitution and the jurisprudence of the Constitutional Court

- ✓ The Legislative Decree shall be in force as stated in the text of the respective Decree.
- ✓ If the Decree makes no mention of its term, **its duration will be indefinite.**
- ✓ If the Legislative Decree deals with rules relating to the imposition of taxes or modifies existing ones, at the end of the next fiscal period, it will no longer be in force unless the Congress, during the following year, grants it a permanent status.
- ✓ Regarding the government initiative matters and during the year following the declaration of the State of Emergency, the Congress may reform, repeal or add the legislative decrees that the Government issued during the State of Economic, Social and Ecological Emergency. Whereas regarding the initiative of its members, Congress shall have the power to exercise these attributions at any time.

National Emergency VS Health Emergency

- ✓ Its source is the Law 9 of 1979 "*by which Sanitary Measures are issued*" and the Decree 780 of 2016 "*by which the Sole Regulatory Decree of the Health and Social Protection Sector is issued*".
- ✓ Law 9 of 1979 (Art. 489) states: "*The Ministry of Health or its delegated entity shall be the competent authorities to carry out actions of epidemiological surveillance and sanitation control of port areas, vessels and vehicles*".
- ✓ Decree 780 of 2016 "*Article 2.8.8.1.4.3 Sanitary measures. In order to* **prevent or control the occurrence of an event or the presence of a situation that threatens individual or collective health,** *the following preventive, safety and control health measures are considered: a) Isolation or hospitalization of sick people and/or animals; b) Quarantine of healthy people and/or animals; c) Vaccination or other prophylactic measures for people and animals; (...)".*
- ✓ **Resolution No. 385 of 2020** *issued by the Ministry of Health and Social Protection declared the* **health emergency** *due to COVID-19 until* **May 30, 2020**, *adopting, among others, the following measures: a) Suspends events with a capacity of more than 500 people, b) Orders commercial establishments and markets to implement hygienic measures in the spaces or surfaces of contagion, c) Prohibits the docking, disembarking, loading and unloading of passengers and goods from passenger ships in international maritime traffic, (d) Order those responsible for public and private transport and those who operate it to take appropriate hygienic and other measures to prevent the spread of COVID-19; (e) Order all sound broadcasting stations, television programmers and other mass media to broadcast the health situation and protective measures for the population free of charge, etc. Translated with www.DeepL.com/Translator (free version)*
- ✓ *The health emergency was extended by the Ministry of Health until the* **31st of August of 2020** *by the* **Resolution 844 of 2020.**

Legal Review

- According to the Constitution and Law 137 of 1994, during this period (i) the Government may issue decrees with the force of law (i.e. Legislative Decrees) and (ii) the Government will submit to the **Constitutional Court** (the day after their issuance) the legislative decrees it issues in exercise of these powers, so that the Court may decide on their accordance with the Constitution.

- Likewise, Art. 136 of Law 1437 of 2011 (Colombian Administrative Code) indicates that the measures of general character that are dictated in exercise of the administrative function and as development of the legislative decrees during the States of Exception, will have an immediate control of legality, exercised by the **Administrative Branch of the Judicial Power.**

2 *Pipeline* of the 5th Generation of Toll Road Projects (5G) and the Regasification Plant.

General Information

- The 5G program includes roads, airports and river projects
- The estimated investment on the 5G infrastructure program shall be up to 1,67% of the Gross Domestic Product ("**PIB**" for its acronym in Spanish)
- The program will be implemented in two phases:
  - **Phase I**: 12 projects - US $ 4,830 million (estimated investment)
  - **Phase II**: 11 projects - US$8,051 million (estimated investment)

Multimodal Infrastructure

Total: USD$ 5,3 Bill. / %PIB 1,67%

Roads

USD$ 2.6 bill.

Alo Sur	USD$ 188 mill.
Accesos Norte II	USD$ 363 mill.
Accesos Cali - Palmira	USD$ 331 mill.
Buga – Buenaventura	USD$ 700 mill.
Pto Salgar - Barrancabermeja	USD$ 560 mill.
Barrancabermeja – San Roque	USD$ 466 mill.

Airports

USD$ 1.4 bill.

Suroccidente	USD$ 337 mill.
Cartagena	USD$ 134 mill.
El Dorado I	USD$ 157 mill.
Cartagena II	USD$ 834 mill.

Fluvial

USD$ 0,79 bill.

Magdalena River	USD$ 166 mill.
Dique Channel	USD$ 557 mill.
Buenaventura channel	USD$ 68 mill.

Rail

USD$ 0,51 bill.

Freight Rail – Dorada Chiriguana	USD$ 514 mill.

Source: Ministry of Finance

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ROADS

MALLA VIAL VALLE DEL CAUCA

Project Name	**Malla Vial del Valle del Cauca Project - Accesos Cali and Palmira.**
Purpose of the Project	Public initiative. The project will have a length of 310 km, which are divided into the construction of 15.6 km of new single roadway between Cali and Jamundí; 12.6 km of new second roadways; 291.4 km of the improvement of the existing corridors; 2 unevenness changers (Sameco and Versailles); 2 vehicular bridges over the Cauca River; and 13 pedestrian bridges.
Estimated investment	Approx. USD 331 millions
Status	The draft of the bidding documents are published (observation stage)
Additional Information	https://www.contratos.gov.co/consultas/detalleProceso.do?numConstancia=20-19-10660579

Agencia Nacional de Infraestructura

IP ALO SUR

Project Name	**Avenida ALO SUR Project.**
Purpose of the Project	Private initiative. The project is based on the construction, operation and maintenance of 24 KM in Bogotá, from 13th Street to the Chusacá sector. On December 27, 2019, the project was approved by the Council of Ministers.
Estimated investment	Approx. USD 188 millions
Status	Feasibility
Additional Information	https://www.ani.gov.co/consejo-de-ministros-aprueba-proyecto-de-la-avenida-longitudinal-de-occidente-alo-tramo-sur-de

Agencia Nacional de Infraestructura

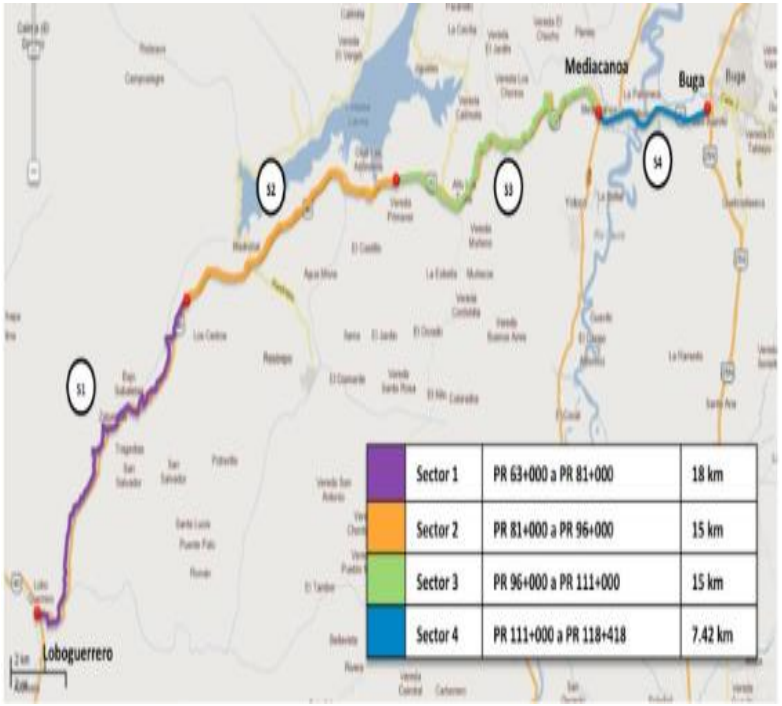
ACCESOS NORTE PHASE II

Project Name	**Phase II of Accesos del Norte Project**
Purpose of the Project	Public initiative which includes the construction of the second roadway, between streets 201 and 245, on Carrera Séptima (Bogotá), as well as platforms and bike paths. On March 7, the hearing for the socialization of the project was held.
Estimated investment	Approx. USD 363 millions
Status	Feasibility
Additional Information	https://www.ani.gov.co/ani-socializo-en-audiencia-publica-proyecto-accesos-norte-ii

Agencia Nacional de Infraestructura

BUGA - BUENAVENTURA

Project Name	**Buga- Buenaventura project**
Purpose of the Project	Public initiative regarding the construction of a second roadway between Buga and Buenaventura, 40 kilometers, and this project will be divided through two contracts: Buga-Loboguerrero and Loboguerrero- Buenaventura.
Estimated investment	Approx. USD 700 millions
Status	Feasibility
Additional Information	https://ruapp.dnp.gov.co/publico/listado_proyectos.aspx



ANI Agencia Nacional de Infraestructura

PUERTO SALGAR- BARRANCABERMEJA (former section of Ruta del Sol II)

Project Name	**Puerto Salgar-Barrancabermeja (Transversal del Magdalena)**
Purpose of the Project	Public initiative, which includes the construction of 274 kilometers of a double roadway and the improvement of 260 kilometers of existing road. In addition, the completion of four unfinished roadways and the construction of 14 additional roadways in the Puerto Salgar - San Roque section are projected. This project is divided into two projects (i) Puerto Salgar - Barrancabermeja; and (ii) Barrancabermeja - San Roque.
Estimated investment	Approx. USD 560 millions
Status	Feasibility
Additional Infornation	https://mintransporte.gov.co/publicaciones/7306/mintransporte-garantiza-acciones-para-la-conectividad-del-sur-del-pais/

Agencia Nacional de Infraestructura

BARRANCABERMEJA-SAN ROQUE (former section of Ruta del Sol II)

Project Name	**Barrancabermeja – San Roque project (Transversal del Magdalena)**
Purpose of the Project	Public initiative, which includes the construction of 274 kilometers of a double roadway and the improvement of 260 kilometers of existing road. In addition, the completion of four unfinished roadways and the construction of 14 additional roadways in the Puerto Salgar - San Roque section are projected. This project is divided into two projects (i) Puerto Salgar - Barrancabermeja; and (ii) Barrancabermeja - San Roque.
Estimated investment	Approx. USD 466 millions
Status	Feasibility
Additional Information	https://www.ani.gov.co/ani-avanza-en-la-estructuracion-de-la-troncal-del-magdalena

Agencia Nacional de Infraestructura

Railway – Waterways – Maritime

Railway – Waterways – Maritime

- Dique Channel
- Magdalena River
- Railway La Dorada - Chiriguaná
- IP Buenaventura Access Channel

DIQUE CHANNEL

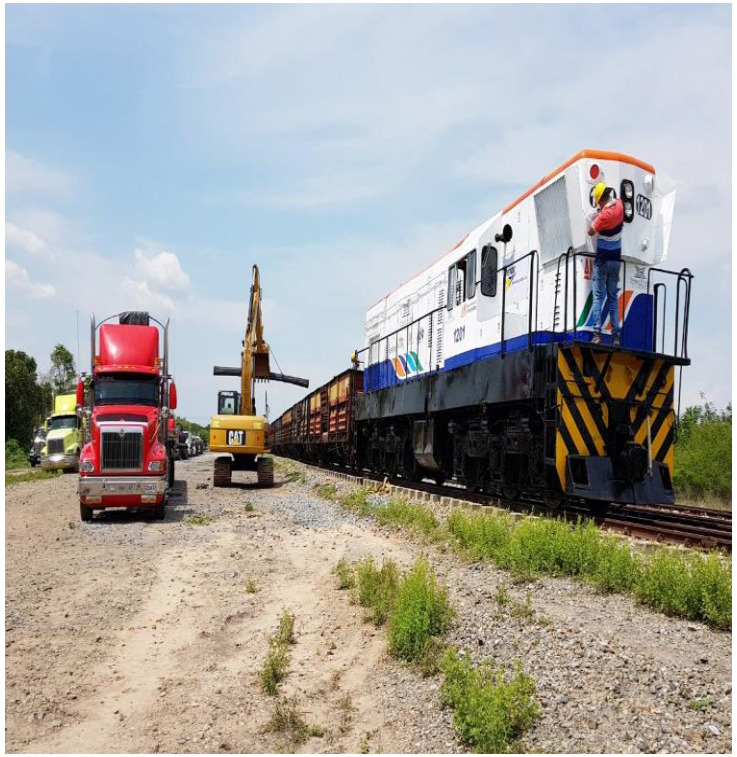
Project Name	**Canal del Dique Macroproject**
Purpose of the Project	A 15-year concession for the intervention of 17 kilometers that covers the expansion of the channel, 29 individual concession works to reduce the risk of flooding and the improvement of the navigability of the Magdalena River. Approximately 3 million tons of cargo and 12 million barrels are carried each year through the Canal. With this project, this numbers are expected to increase by its development. In addition the tourism is also expected to increase
Estimated investment	Approx. USD 557 millions
Status	The prequalification documents are published (observation stage)
Additional Information	https://www.contratos.gov.co/consultas/detalleProceso.do?numConstancia=20-19-10863897

MAGDALENA RIVER(BARRANCABERMEJA – BARRANQUILLA – BOCAS DE CENIZA)

Project Name	**Magdalena River Navigability Recovery Project.**
Purpose of the Project	The Project seeks to recover the navigability of the Magdalena River from the section comprising the municipalities of Puerto Salgar - La Dorada to Bocas de Ceniza in Barranquilla -approximately 908 kms-. The Project involves dredging works, maintenance of the navigable channel (Barrancabermeja - Barranquilla) and channeling works.
Estimated investment	Approx. USD 971 millions
Status	Pre-qualification
Additional Information	https://www.contratos.gov.co/consultas/detalleProceso.do?numConstancia=19-19-10026539

RAILWAY LA DORADA - CHIRIGUANÁ

Project Name	**Central Corridor - La Dorada – Chiriguaná Public Works Contract**
Purpose of the Project	This project was divided in sections and phases. The first one covers the section between La Dorada and Chiriguaná, a second one focuses on the construction of La Tebaida - Buenos Aires - La Dorada, the third phase seeks to rehabilitate the section La Dorada - Chiriguaná and the last one covers the construction of the section Chiriguaná - Barranquilla.
Estimated investment	Approx. USD 514 millions
Status	Structuring
Additional Infornation	https://www.mintransporte.gov.co/publicaciones/8102/gobierno-nacional-avanza-en-la-estructuracion-integral-del-corredor-ferreo-entre-la-dorada-y-chiriguana/

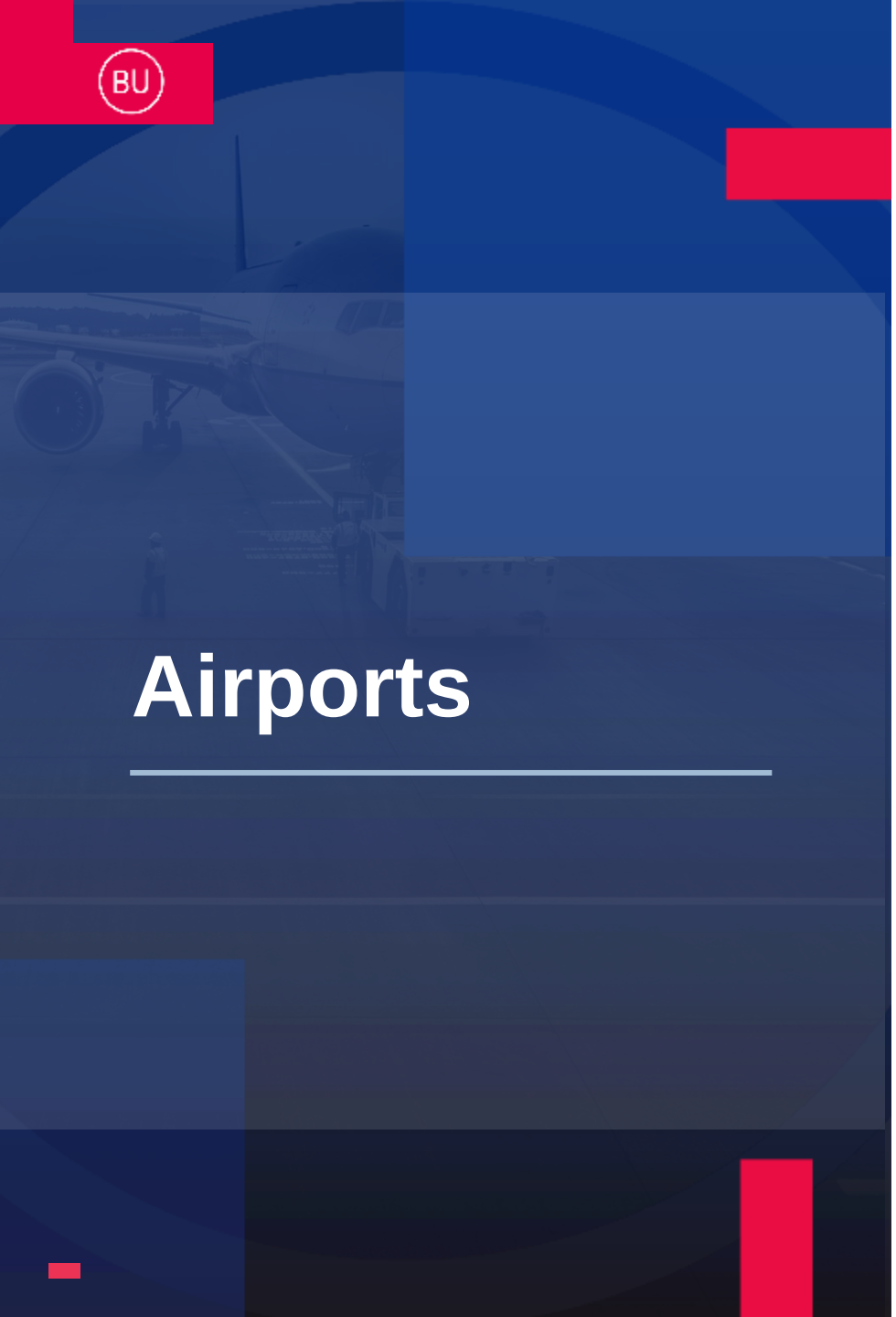


Agencia Nacional de Infraestructura

IP BUENAVENTURA ACCESS CHANNEL

Project Name	**Project Deepening the access channel to the port of Buenaventura.**
Purpose of the Project	Private initiative for the dredging of the access channel to the port of Buenaventura.
Estimated investment	Approx. USD 68 millions
Status	Pre-feasibility (Prior Consultations are about to begin)
Additional Information	https://www.portafolio.co/economia/infraestructura/contemplan-cobrar-peajes-en-el-puerto-de-buenaventura-536141

Airports



Airports

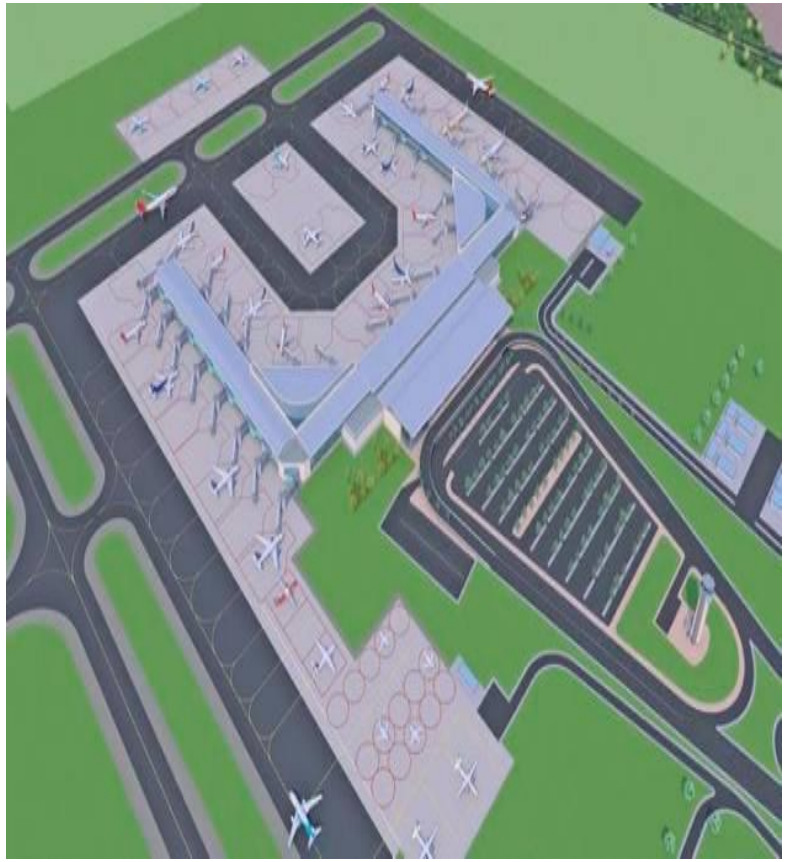
- Cartagena Airport
- New Cartagena Airport
- IP Southwest Airports

CARTAGENA AIRPORT

Project Name	**Cartagena Airport Expansion Project.**
Purpose of the Project	This private initiative PPP project is based on the construction of a new boarding pier, the renovation of the terminal and the expansion of the main platform. It also seeks for the financing, operation and maintenance of all the infrastructure of the current Cartagena airport.
Estimated investment	Approx. USD 134 million
Status	Feasibility
Additional Information	https://mintransporte.gov.co/publicaciones/7428/ani-avanza-en-la-estructuracion-de-proyectos-para-intervenir-9-aeropuertos-y-8-corredores-viales-en-2019-y-2020/

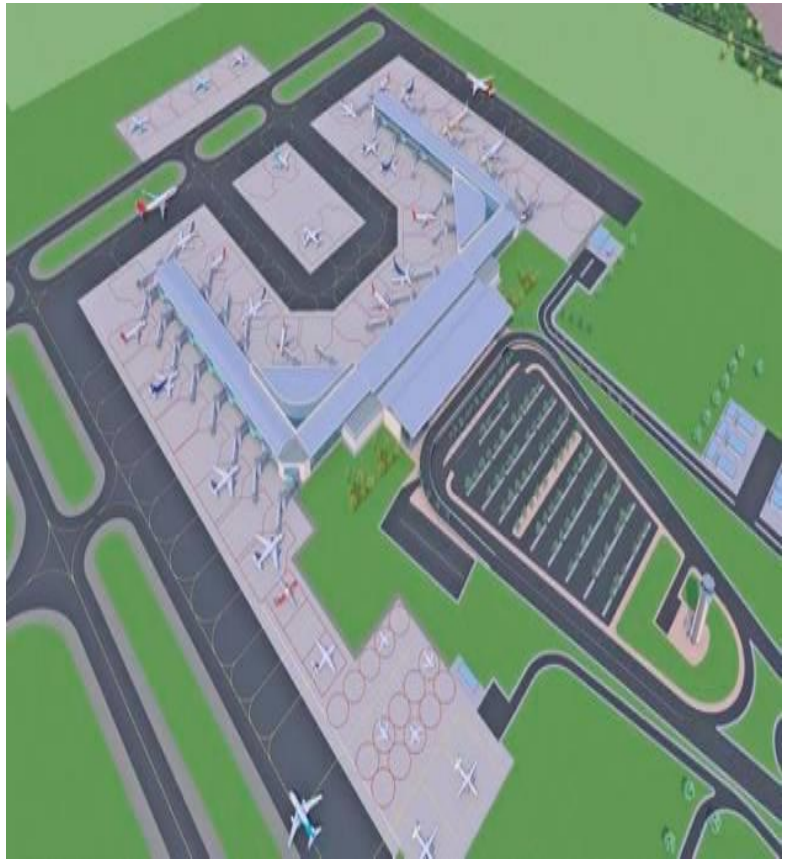
NEW CARTAGENA AIRPORT

Project Name	**New Cartagena Airport Project.**
Purpose of the Project	The private initiative PPP Project includes the construction, operation and maintenance of a new air terminal located 24 kilometers from downtown Cartagena. On its first phase, the Project covers the construction of a passenger terminal, a runway, taxiways and boarding bridges with a capacity to transport 9 million passengers. The total capacity of the airport in all its phases contemplates moving 30 million passengers. This airport will be the first completely sustainable airport in Colombia. ODINSA S.A. acquired 70% of the participation in the private initiative.
Estimated investment	Approx. USD 834 million
Status	Feasibility
Additional Information	https://www.ani.gov.co/ani-realizo-audiencia-publica-de-socializacion-del-proyecto-de-la-ciudadela-aeroportuaria-cartagena



IP SOUTHWEST AIRPORTS

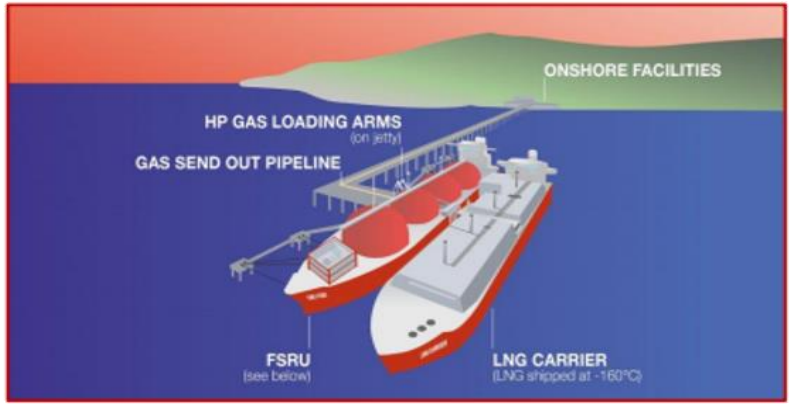
Project Name	**Project for the airports Alfonso Bonilla Aragón in Cali, El Edén in Armenia, Benito Salas in Neiva, Perales in Ibagué and Gerardo Tovar in Buenaventura**
Purpose of the Project	Aena Desarrollo Internacional S.A. and Corporación Financiera Colombiana S.A. presented to the ANI a private initiative that includes the design, construction, modernization, expansion, maintenance and operation of the five airports, for a term of 30 years.
Estimated investment	Approx. USD 272 million
Status	Feasibility.
Additional Information	https://www.ani.gov.co/ani-realizo-audiencia-publica-de-socializacion-del-proyecto-de-la-ciudadela-aeroportuaria-cartagena



Regasification Infraestructure in the Colombian Pacific

Project Name	Regasification Infrastructure in the Colombian Pacific
Purpose of the Project	To select an investor that must provide the service of LNG storage, regasification and natural gas transportation and related services from a Pacific gas import infrastructure which composed of (i) a regasification plant in the Buenaventura´s bay and (ii) a gas pipeline between Buenaventura and Yumbo.
Estimated investment	Approx. USD 700 million
Status	The Draft of the Documents to select the investor were published on June 30,2020. The submission of the proposal is on February 17, 2021.
Additional Infornation	https://www1.upme.gov.co/PromocionSector/Paginas/Convocatorias-gas-natural.aspx

FSRU



Onshore Plant

3 Our pipeline website

BU- Pipeline

https://pipeline.bu.com.co/

4 Documents usually required for participating in large public tenders in Colombia

Legal Capacity

- Although, the documents required to accredit the legal capacity of a bidder may vary depending if it is a national bidder, a foreign bidder with a branch in Colombia and/or a foreign bidder without a branch in Colombia; these are the documents that are normally required regardless of the type of bidder:

1. Good standing certificate *(certificado de existencia y representación).* This certificate must accredit:

   i. That the company exists and is in good standing.
   ii. The legal capacity of the legal representative(s) of the company to perform any other necessary acts required in the respective RFPs .
   iii. That the corporate purpose of the bidder allows it to comply with the purpose of the tender and to complete the project.
   iv. It is also usual that public entities require that this certificate must have been issued within a specific term (e.g. for some 5G toll road public tenders it is 30 days prior to the closing date).

2. In the event that the legal representative(s) of the bidder has/have statutory limitations to present the Offer and in general to carry out any act derived from this Public Tender, an authorization from the competent corporate body of the bidder must be attached to the bid.

Legal Capacity

- Foreign companies with no branch in Colombia must appoint an attorney domiciled in Colombia, duly empowered to perform any other necessary acts required in the respective RFPs (e.g. file the bid, execute the documents and declarations in the RFPs and to incorporate the SPV –if necessary-).

- The members of the plural structures must prove all the previously documents and, in addition to that:

    i. They must appoint a common representative that will represent the plural structure and will be the interlocutor before ANI

    ii. They must designate a member that will be the "Leader", who, normally, must have a participation of at least 25% within the plural structure.

Financial Capacity

- Foreign bidders not having a branch in Colombia are required to submit their latest financial statement and additional certifications summarizing their main financial indicators.
- These are the financial indicators that are normally required to accredit *Financial Capacity* regardless of the type of bidder:

  i. **Net Equity**: This value is not standard, so depending on each project, the respective public entity may require the participant(s) to accredit at least a pre-established amount of their net equity. This is accredited through the bidder's financial statements.

  ii. **Rate of indebtedness**: This requirement may vary depending on the project (e.g. for 5G tooll road projects is around 85% to 90%.

  iii. **General and/or specific credit commitment:** The bidder(s) must provide a certification of approval of general and/or specific credit quota issued by a financial entity and for an amount defined by the public entity.

- With regards to plural structures, their "leader" must accredit a specific Net Equity.

Investment Experience

- The Investment Experience required for each public entity may vary depending on the project; however, these are the most common requirements for the accreditation of the requirement with regards to infrastructure projects:

  i. **The granting and financing of a concession agreement for an infrastructure project**: Specifically, public entities request that the financing (financial closing) of the accredited contract shall have been of at least a defined amount and within a defined timeframe. For this purpose public entities request:

     - A certification issued by the Financial Institution that granted the credit.
     - A certification issued by the contracting entity (e.g. Agencia Nacional de Infraestructura).
     - A certification issued by the debtor.

  ii. That the person/entity accrediting the Investment Experience has been a party of the infrastructure project concession contract at the time that the financing (financial closure) of the same took place.

  iii. That the respective concession contracts (i) have not been terminated due to expiration or noncompliance attributable to the contractor and (ii) the performance guarantees granted by the respective contractor have not been enforced,

Score Granting Criteria

- The scoring criteria shall be reviewed on a case by case basis. However, please find below an example of these criteria's:

Technical Offer	Quality Factor	Economic Offer	Incentive to National Industry	Bidders with Workers with a Condition of Disability
• Bidders shall offer to hire a percentage of the project qualified and non-qualified staff from the influence zone of the Project (understood as the municipalities affected by the Project).	• This requirement normally implies that the bidder offers *Additional Works or services* to the ones that is obligated to do under the Public Tender.	• The Economic Offer normally is credited through the submission of a document reflecting the present value of the Project Revenue expected by the bidder.	• Foreign Bidders shall accredit the use of a certain percentage of national goods in order to obtain these points. • The amount of points depends on the percentage of national goods to be used in the execution of the project.	• In accordance with Article 2.2.1.2.4.2.6. of Decree 1082 of 2015, 100% will be assigned to those bidders who accredit a certain a number of workers with disabilities in their plant staff.

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