

## ELANBiz Info card

### Public procurement in Colombia

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Prepared by ELANBiz Expert in Colombia. Last update: November 2017

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The national government and local authorities are the major buyers of goods and services in the country. It is estimated that public procurement represents up to 25% of GDP<sup>1</sup>. Currently, the Colombian market offers great opportunities for EU companies to participate in public procurement especially in infrastructure projects. The FTA between Colombia/Peru and the EU improves access for EU companies to public procurement establishing a series of provisions that guarantee non-discrimination with local companies.

#### ¿Which is the applicable regulatory framework in Colombia?

All public procurement in Colombia must be organized through a public tender procedure. This procedure is regulated by Law 80 of 1993, Law 1150 of 2007 and by Decree 1510 of 2013, among others<sup>2</sup>. Colombia has been adopting important reforms regarding public procurement in the last decade in order to improve the transparency of the national system. In 2011 the National Agency for Public Procurement “Efficient Purchase Colombia” was created. It is responsible for national purchasing policy and to seek greatest uniformity and transparency of the contracting authorities.

There are five modalities of selection in Colombia: Competitive Bidding, Abbreviated Selection (when the special characteristics of the goods or services to be procured require it), Merit-Based Contest (this method involves the selection of consultants or projects requiring a specific expertise), Direct Contracting (limited to specific cases)<sup>3</sup>, and Low Value Contracts. Competitive Bidding is the main modality of selection. It allows contracting both for the execution of works and for the purchase of goods and services.

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<sup>1</sup>See OCDE report on market openness of Colombia

[www.mincit.gov.co/mincomercioexterior/descargar.php?id=73236](http://www.mincit.gov.co/mincomercioexterior/descargar.php?id=73236)

Note that considering that Colombia is not yet part of the OECD, statistical information on public procurement in the country is scarce.

<sup>2</sup> See <https://www.colombiacompra.gov.co/sintesis/como-usar-sintesis> for further information about regulation on public procurement in Colombia.

<sup>3</sup> Direct contracting can only be used in the following circumstances: (i) manifest urgency, (ii) lending contracts, and (iii) inter-administrative contracts.

## ¿Where is it possible to find relevant information?

General information on public tenders in Colombia is available at: [www.colombiacompra.gov.co](http://www.colombiacompra.gov.co)

For specific information on public procurement in Colombia, you should consult the directory “Business Services” of the Elan Biz platform and contact the representative offices of the Members States of the EU. Some even have binational chambers of commerce or trade promotion offices.

It is also advisable to contact your national organizations in Colombia to access to lawyers specialized on public procurement law<sup>4</sup>.

## ¿Shall UE companies submit proposals in Colombian public tenders?

EU companies without domicile or branch in the country may submit proposals in Colombian public tenders. Note that they don't have to register in the bidder's registry (RUP) but they have to designate an agent for the submission of the proposal.

The following persons and entities may submit proposals: (i) natural persons or foreign nationals with or without domicile in Colombia (ii) national or foreign legal entities with or without address in Colombia and (iii) consortia and/or temporary joint ventures, which can be formed by natural and legal persons, national or foreign, addressed or not in Colombia.

Legal and natural persons wishing to participate on public procurement in Colombia must register with the Registry of Proponents (RUP). The RUP is valid for one year, and certifies information concerning (i) legal capacity, (ii) economic activities, (iii) financial capacity, (iv) organizational capacity (which is composed of technical and operational organization), and (v) experience of the proponent.

Regarding EU companies without domicile or branch in Colombia and that are not obliged to register in the bidder's registry (RUP), the information will be verified by the public entity through the documents that are deemed necessary. The compliance of the above procedure does not represent a greater burden for EU companies than for nationals or foreigners domiciled in Colombia.

The certification of the registration as a competitor, proponent and contractor is valid for a one (1) year since the beginning of the administrative procedure.

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<sup>4</sup><https://www.elanbiz.org/business-services>

All foreign bidders not domiciled in Colombia must certify the designation of an agent with domicile in the country and duly empowered to submit the proposal, sign the contract and represent them in judicial and extrajudicial procedures. Once awarded the contract, they will be required to open a corporate structure in Colombia.

### **¿How does the agreement with the EU improve opportunities for each of the parties to participate in public tenders organized by the other party?**

The EU is an open public procurement market. The FTA ensures better access to each of the parties to the bidding processes organized by the other party.

Likewise, the FTA states that public procurements in Colombia must follow open and transparent procedures and ensures that EU companies can compete on equal terms with local corporations.

The regulation on public procurement is described in Title VI and Annex XII of the Agreement. The main text provides general principles and establishes the scope of the agreement while Annex describes the contracting entities covered<sup>5</sup>, the threshold for the value of the contract on which the provisions apply and all excluded contracts (e.g.: support for agriculture, social programs and sensitive defence equipment). In the Annex, the main features of the process for the award of public contracts are described: where public tenders have to be published, the documentary requirements, contract awards and terms...

Annex XII states the amounts covered in SDR (Special Drawing Rights)<sup>6</sup> for each of the parties to the Agreement, depending on whether it is for goods, services or construction services and whether it is for the central level or sub-central government or other covered entities. These amounts allow to define the scope of the procurements covered by the FTA. Their value must be equal to or greater than the value of the relevant threshold specified for each part.<sup>7</sup>

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[http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc\\_147732.pdf](http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147732.pdf)  
[http://www.tlc.gov.co/loader.php?IServicio=Documentos&IFuncion=verPdf&id=67372&name=Anexo\\_XII\\_-\\_Contratacion\\_Publica.pdf&prefijo=file](http://www.tlc.gov.co/loader.php?IServicio=Documentos&IFuncion=verPdf&id=67372&name=Anexo_XII_-_Contratacion_Publica.pdf&prefijo=file)

<sup>6</sup>The SDR is a unit of account used by the International Monetary Fund, composed of a basket of different currencies of several countries  
<https://www.imf.org/external/np/exr/facts/spa/sdrs.htm>

<sup>7</sup> Thus in the case of goods to Colombia, the amount is 130,000 SDRs with the central government level and SDR 200,000 in the case of sub-central level of government or other entities. In the case of services 130,000 SDR (central level) and 200,000 SDRs (sub central level and other entities) and services for the construction, 5,000,000 (at both levels and for other entities).

The **principle of national treatment** in public procurement as defined in Article 175 of the Trade Agreement is especially relevant. It applies to goods, services and supplier in order to regulate the practice of preferring products of domestic suppliers to foreign one.

Following, Article 175 of the Trade Agreement on "off set compensation" states that regarding procurement, none of the party, including its contracting entities, should solicit, impose or require any compensation.

In a similar way, it is now expressly forbidden to set in a tender the condition of a previous selection of the proponent in Colombia. Likewise, it is now forbidden to only consider the experience of the proposer in the country (Article 178 paragraph 2 of the Agreement).

In consequence of the entry into force of the Trade Agreement, Colombia had to adapt its legislation eliminating several selection criteria that are no longer applicable to EU companies. This is for example the provision that stipulated that in case of equal conditions of the proponents, the entity had to prefer the supply of goods and services of national origin. In a similar way, the criterion that when several foreign bidders were on an equal footing, the public entity had to choose the proponent whose proposal had greater integration of national resources, greater domestic or better conditions for technology transfer component, does not exist any longer for selecting EU companies in Colombian public procurement.

Note finally that Article 190 of the FTA provides the obligation of each party to foresee an administrative or judicial review process allowing any service provider interested in a bidding to contest the violation of the provisions of the FTA. Then this article establishes the obligation for the parties to foresee an appeal procedure of the initial decision and the eventual possibility of obtaining compensation for damages suffered as a result of the violation of the provisions of the FTA on public procurement.

Article 190 of the Agreement has direct application stating that the supplier who has or has had an interest in a covered procurement can allege a violation of the corresponding Title or lack of compliance with its provisions. In Colombia, the issue is still new but the idea is to give clear tools to administrative judges to resolve potential claims ensuring compliance with international commitments.

### Links of interest

- **Text of the Trade Agreement between European Union and Colombia/Peru:** <http://trade.ec.europa.eu/doclib/press/index.cfm?id=694>  
*(In the web site, you can get the official translation of the Trade Agreement in all the languages of the European Union).*
- **Public procurement portal of Colombia.** [www.colombiacompra.gov.co](http://www.colombiacompra.gov.co)

- **Market openness review of Colombia (OCDE)**  
[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC\(2014\)4&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC(2014)4&docLanguage=En)
- **Procolombia – Guide to do business in Colombia (page 140)**  
[http://inviertaencolombia.com.co/Guia\\_Legal\\_2016.pdf](http://inviertaencolombia.com.co/Guia_Legal_2016.pdf)

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