ELANBiz InfoCard: Public procurement in Colombia

Updated as of July 12, 2019

The National Government, through its ministries and territorial entities, such as governors' offices, mayors' offices, and municipalities, are the main buyers of goods and services in Colombia. It is estimated that public procurement can represent up to 25% of the GDP\(^1\).

The public budget is approved by the Congress of the Republic annually and is assigned, through the Ministry of Finance, to the different State entities for operating and investment expenses. The budget, in turn, must be contracted and implemented every year.

Currently, foreign companies can participate, present bids and be potential awardees of public contracts, thanks to the fact that the regulations in force do not restrict or limit them. On the contrary, the Colombian State, applying the reciprocity dictated by Law 816 of 2003 and complementary rules, treats the foreigner as a national, and scores foreign companies in tender processes for public procurement on equal terms as Colombian companies.

For the purposes of supply of goods and merchandise, foreign companies do not need to have a branch established in Colombia. It is enough to have an attorney representing them judicially and extrajudicially.

To provide services, it is necessary to have a branch in Colombia. However, the foreign company will only have the obligation to establish it in case the contract is awarded to such company, and it can perform it.

Likewise, public procurement regulations allow foreign companies to make temporary unions or consortia with Colombian nationals to present their bids in the selection processes of different State entities. This with the purpose of joining efforts and strengthening requirements that foreign companies alone could not meet; among them, financial, technical, economic or legal requirements.

\(^1\)See OECD study on Colombia’s he commercial opening
The entity Colombia Compra Eficiente (CCE)\(^2\) depends directly on the National Planning Department (DNP). It was created, on the one hand, in order to establish unified policies that guide public procurement administrators; and on the other, in order to monitor and evaluate the performance of the system and generate greater transparency in it.

Colombia Compra Eficiente is, therefore, the governing body that provides adequate support to perform State contracts in Colombia. Since its creation, information systems, policies, guidelines, orders and manuals have been issued for the general public and procuring entities, in order to strictly enforce the current contractual regulations guaranteeing transparency and the plurality of national and foreign suppliers.

**What is the regulatory framework applicable in Colombia?**

All contracts with public entities in Colombia, of the State or regional order, must be made through a procurement procedure in accordance with the provisions of Law 80 of 1993, Law 1150 of 2007 and Regulatory Decree 1082 of 2015.

The previous regulations require the procurement processes public entities carry out to select a contractor who sells goods and services to be done through public procedures, where equal participation of national and foreign firms is allowed.

For this purpose, Colombia Compra Eficiente created the SECOP I and II systems, where State entities publish their procurement processes on the Web. With the new SECOP II system, companies can submit bids and participate in the contracting processes on the internet and online in their entirety, without having to physically go to the State entity, except at the time of signing the contract and starting its performance.

There are five modalities to select the contractors provided in Law 1150 of 2007, which establishes how the criteria for each modality should be applied. These modalities are:

- **Public tender**: it is used for contracts of amounts in excess of 1,000 current legal monthly minimum wages (SMMLV) (more than € 225,563 approx.) And, in general, it is used for works, maintenance and purchase of goods. The procurement process takes from two (2) to three (3) months until the contractor is selected.

\(^2\) https://www.colombiacompra.gov.co
Among the public tenders, the modality of contracts for the concession of public works stands out, whereby the concessionaire is obligated to build a public work in exchange for remuneration, which may consist of the fees derived from the exploitation of said public work (for example, the construction of a road, in exchange for receiving the collection of tolls)\(^3\).

Colombia is in the process of implementing *Pre-determined Documents* for the bidding processes. These documents seek to unify and make the procurement process more efficient through general and mandatory guidelines for tenders in certain sectors, such as public works for transport infrastructure.\(^4\)

The Pre-Determined Documents are adopted by the National Government and published by Colombia Compra Eficiente, and include the pre-determined condition sheets, their annexes, matrices and other documents that include the enabling conditions for technical, economic and other factors of choice.\(^5\)

The consultation for pre-determined documents and terms of reference is done through:  
[https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/pliegos-tipo](https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/pliegos-tipo)

- **Brief Selection**: it is a selection modality anticipated for cases in which simplified processes can be carried to guarantee the efficiency of the procurement management when the characteristics of the object of the contract, the circumstances of the procurement or the quantity or the purpose for the goods, work or service so dictate.\(^6\) It is used for quantities that do not surpass 1,000 SMMLV (less than € 225,563 approx.) for services, works and goods. The procurement process takes forty-five days (45) until the contractor is selected.

- **Contest of merits**: it is used for consulting, design or services where professional and academic profiles are required according to the needs of public entities. The procurement process takes two (2) months until the contractor is selected.

- **Minimum amount**: it is used for smaller amounts that do not exceed 100 SMMLV (approx. € 22,556) for services or goods, and only the lowest price is qualified.

---

\(^5\) [https://www.colombiacompra.gov.co/colombia-compra/normativa](https://www.colombiacompra.gov.co/colombia-compra/normativa)  
The procurement process takes between eight (8) to fifteen (15) days until the contractor is selected.

- **Direct contracting**: these processes are not published in SECOP and are determined for certain needs, such as: inter-administrative agreements (agreements among public entities), leases, loans, professional services contracts with individuals and exclusive providers (national or foreign companies that are the only manufacturers in the market or have patents protected by copyright).

- **Public-Private Partnerships (PPP)**: are an instrument for linking private capital, which is embodied in a contract between a State entity and a private sector company for the provision of public goods or services. This contract involves the retention and transfer of risks and profits related to the service or public good provided through this collaboration model.\(^7\)

It should be noted that all modalities are public and all companies that comply legally, financially, technically and economically can bid, except for direct contracting, which, as explained above, is not public and is directly with a supplier.

Some of the provisions contained in the commercial agreements are incorporated in Laws 80 of 1993, 1150 of 2007, and in Decree 1082 of 2015, such as: selection modalities; advertising rules in SECOP; annual plans for acquisitions and call notices; as well as the possibility of making calls limited to medium and small companies (SMEs).

Trade agreements establish additional rules related, for example, to national treatment and minimum deadlines for submitting bids. In this sense, some State entities under a special regime must make adjustments in their procurement manuals for the correct application of the commercial agreements when these are applicable to procurement processes.

**Where to find information?**

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

Specifically, in the SECOP I and SECOP II virtual platforms, the search for tender processes and other means of public procurement selection can be done throughout the national territory, together with the search in public entities’ annual procurement plan.

\(^7\) http://www.secretariasenado.gov.co/senado/basedoc/ley_1508_2012.html
Likewise, you can consult the “Guide for the Participation of Foreign Suppliers in Procurement Processes” (Guía para la participación de Proveedores Extranjeros en Procesos de Contratación), which contains a navigation chart for foreign firms wishing to participate in State purchases in Colombia.

In the official web pages for the Colombian government such as DNP, there are also infrastructure projects that can be carried out with private companies.

To obtain specific information on public procurement in Colombia, it is recommended to consult the “Business Services” Directory on the ELANBiz Platform, where you can access contact details of the representative offices of the Member States of the European Union. Some even have bi-national chambers of commerce or commercial promotion offices.

Likewise, it is recommended to contact national organizations and Bi-national Chambers present in Colombia to have access to lawyers specialized in public procurement.

Finally, it is important to consult the Manual to determine and verify the qualifying requirements in the Procurement Process in order to know what is required to be a suitable candidate for participation in public procurement.

**How can European companies bid in public tenders in Colombia?**

European companies with no domicile in Colombia can bid in public tenders, in which case they will have to register in the Single Bidders Registry (RUP) and will have to appoint a proxy for the presentation of their bid.

In general, these are the natural and legal persons who can bid in public tenders: (i) national or foreign natural persons with or without domicile in Colombia, (ii) national or foreign legal persons with or without domicile in the country, and (iii) consortia and / or temporary unions, which may be made up of natural and legal persons, national or foreign, with or without domicile in Colombia.

---

9 [https://www.dnp.gov.co/programas/participacion%3b3n-privada-%20y-en-proyectos-de-infraestructura/Paginas/participacion%3b3n-privada-y-en-proyectos-de-infraestructura.aspx](https://www.dnp.gov.co/programas/participacion%3b3n-privada-%20y-en-proyectos-de-infraestructura/Paginas/participacion%3b3n-privada-y-en-proyectos-de-infraestructura.aspx)
Legal or natural persons who wish to contract with the State must register in the RUP. This registration is valid for one year and certifies information related to (i) legal capacity, (ii) economic activities, (iii) financial capacity, (iv) organizational capacity, which is composed of technical organization and operational organization and (v) the bidder’s experience.

However, foreigners without domicile in the country are not required to process the RUP. In this case, the information will be verified by the procuring entity with the documents it deems necessary, without the burden for foreigners being greater than that of nationals or foreigners domiciled in Colombia.

The proof of registration to be a participant, bidder and contractor is valid for one (1) year from the beginning of the procedure.

All foreign bidders without domicile in Colombia must credit the representation of an attorney domiciled in this country. The lawyer must have power of attorney to present the bid and enter into the contract, as well as to represent them judicially and extrajudicially. Once the contract has been awarded, the bidder will have the obligation to establish a corporate structure in Colombia in case the contract’s object is to provide services.

It should be taken into account that the requirements may vary depending on the type of contract. The entities in charge will decide which requirements must be considered to be qualified as a candidate to contract with the State.11

To guarantee objective and fair criteria to determine scores for national or foreign companies, Colombia Compra Eficiente issued the “Manual for the Management of Incentives in the Procurement Processes” (Manual para el Manejo de los Incentivos en los Procesos de Contratación)12, which dictates the rules for national and foreign reciprocal treatment when bids are presented by local and foreign companies, according to Law 816 of 2003.

This manual indicates that state entities must give national treatment to the goods and services of other States with which there is a Commercial Agreement applicable to the Procurement Process. Likewise, it presents incentives for the promotion of national

---

goods and services, incentives for people with disabilities, calls limited to SMEs and tie breakers.

What can a European company do if it considers that there have been irregularities in a public procurement process?

The particularities of the applicable remedies depend on the authority and the model under which the procurement process is carried out.

If the bidder considers that the award made to a third party was irregular or illegal, he has the right to initiate legal action before the contentious administrative judge to declare the nullity of the contract.

Thus, in case of an award, there are no direct remedies before the State entity, rather, the bidder submits his claim directly to the judge.

However, if the bidding is declared void due to the absence of valid or authorized bids, and the bidder considers that their bid should be considered as valid, the bidder may submit an appeal for reversal directly to the administrative authority that declared the procurement process void. This appeal must be submitted in writing within the first five (5) days following the respective resolution, together with sufficient evidence to prove irregularity or illegality of the bidding process.

If even after submitting the appeal for reversal directly to the public entity, the interested party considers that the declaration of a void tender is illegal, the bidder may file a lawsuit before the contentious administrative judge.

How does the Agreement with the European Union improve the opportunities for European companies to participate in Colombian public tenders?

The negotiation of the Commercial Agreement between the European Union and Colombia has sought to guarantee better participation access between the parties in procurement processes.

An example of this is the section that states that public purchases in Colombia must follow open and transparent procedures and ensure that European companies can
compete on equal terms with local companies. European operators also benefit from access to Colombian contracts at the central, regional and municipal levels.\textsuperscript{13}

<table>
<thead>
<tr>
<th>Commercial Agreement</th>
<th>State entities at the municipal and departmental level</th>
<th>General entities at the national level</th>
<th>Special entities at the national level</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union</td>
<td>Goods and Services COP$ 818,660,000</td>
<td>Goods and Services COP$ 532,129,000</td>
<td>Goods and Services COP$ 818,660,000</td>
</tr>
<tr>
<td></td>
<td>Construction Services COP$ 20,466,500,000</td>
<td>Construction Services COP$ 20,466,500,000</td>
<td>Construction Services COP$20,466,500,000\textsuperscript{14}</td>
</tr>
</tbody>
</table>

However, despite the principle of reciprocity and the provisions of the Trade Agreement between the European Union and Colombia regarding national treatment, there are some sectors that are excepted:

- The acquisition or lease of land, the services of tax or deposit agencies, and public employment contracts.
- Topics related to programs of reintegration into civilian life originated in peace processes, aid to those displaced by violence, support to the inhabitants of conflict zones, and in general, programs derived from the resolution of the armed conflict have exceptions and public procurement restrictions.
- Likewise, in procurement for the Ministry of Agriculture and Rural Development regarding food, agricultural inputs and live animals, related to the programs of support for agriculture and food assistance, equal conditions do not apply.\textsuperscript{15}
- In the same way, public purchases at the national level related to the development of television programs from the Central Product Classifier of

\textsuperscript{13} \url{https://eeas.europa.eu/sites/eeas/files/04._acuerdo_comercial_cartilla.pdf}
subclass 96121 are restricted: Production services of cinematographic films, videotapes and television programs.  

Compared to the other sectors in which national treatment is applied, public procurement is regulated by Title VI of the Agreement, and Annex XII details the list of entities whose contracts must comply with the requirements of the Agreement:

The Agreement also establishes minimum deadlines for submitting bids in order to allow sufficient time for bidders to prepare their bids. The process documents must establish, in their schedule, the sufficient time frame to fulfill this obligation. These deadlines are:

<table>
<thead>
<tr>
<th>General deadline</th>
<th>Deadline for Goods and Services of Uniform Technical Characteristics</th>
<th>Deadline when there is publicity in the Annual Procurement Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 days</td>
<td>10 days</td>
<td>10 days</td>
</tr>
</tbody>
</table>

Lastly, there is an express prohibition against establishing a condition in a tender for the supplier to have been awarded a tender in Colombia already, or to consider only the bidder’s experience in the country (Art 178 numeral 2 of the Agreement).

Links of interest

- Text of the Trade Agreement between the European Union and Colombia / Peru:  
  (on this website you can find the agreement translated in all the languages of the European Union).
- Law 80 of 1993 on Government Procurement in Colombia  
- Law 1150 of 2007 on Government Procurement in Colombia  
- Decree 1510 of 2013  
  [https://sintesis.colombiacompra.gov.co/normatividad/documento/14049](https://sintesis.colombiacompra.gov.co/normatividad/documento/14049)

---


• Law 1882 of 2018
• Decree 342 of 2019
• Colombian Public Procurement Portal
  www.colombiacompra.gov.co
• Market openness review of Colombia (OCDE)
• Procolombia - Guide for doing business with Colombia (page 140)
• Regulatory Framework Public-Private Partnerships
  https://www.dnp.gov.co/programas/participaci%C3%B3n-privada-%20y-en-proyectos-de-infraestructura/asociaciones-publico-privadas/Paginas/marco-normativo-app.aspx

Disclaimer: This information is provided by the ELAN project, but neither the ELAN contractor nor any other party can assume any responsibility/liability for the content of the published information.