



Bogota Foreign Investment Guide - 2025



Chapter 12.

► Public Procurement Regime During the operation

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In Colombia there is a relatively stable regulatory framework for public procurement, which has been modified and adjusted in order to include best practices in this process, better use of information technology and publicity of these selection processes, and the adoption of measures intended to prevent corruption. To identify the best proposals, the Colombian legal scheme determines for most selection processes two types of requirements:

Qualifying requirements, which allow to know which proposals are qualified in order to move forward in the process.

Scorable requirements, which determine the weighting of the proposals.

Who are the parties to a government contract?

- The contracting state entity.
- The contractor, which may be a natural party, national or foreign, a legal party, natural or foreign, or a plural proposal through joint venture contracts, which in Colombia, and for the matter regarding, are best known as consortiums and temporary unions.

How are consortiums and temporary unions formed?

Law 80 of 1993 recognizes the business reality in which two or more interested bidders come together for the purpose of jointly participating in a certain project, without this entailing the need to create a new legal entity. Such constitution shall be materialized through a private document, generally provided by the contracting entity in the form of a boilerplate which is usually part of the documents included in selection process. However, it is possible and recommendable to subscribe a private internal agreement amongst the members of any type of the forementioned joint venture schemes in order for them to stablish the distribution of responsibilities and obligations among them to avoid future conflicts. As said before, the Law expressly recognizes two schemes by which two or more interested bidders may jointly submit a proposal for the award, execution and performance of the contract – Consortiums and Temporary Unions-.

Although the actions, deeds and omission that arise during the execution of the contract shall affect all members, there is a difference in the degree of responsibility, let's see:

- **Consortium:** all consortium members are jointly and severally liable for the breaches and damages they may cause during the execution of the contract as well as to third parties.

Temporary Union: each member response pro rata to its participation and obligations, and none is jointly and severally liable for the liability that corresponds to another member according to the forementioned.



Does the general state procurement regime apply to all state entities?

Although as a general rule all State entities must apply in their procurement activity Law 80 of 1993 and Law 1150 of 2007 as well as any other that modifies or complements these, the Law excludes some of them from its application, in what is known as the special regime of public procurement. State entities under the special regime are obliged to apply different rules in their procurement activity, contained in the Law that creates the special regime and their procurement manual.

The special regime applies only to some entities and sectors expressly provided for in the Law, such as public services, electric sector, industrial and commercial enterprises of the State, telecommunications, the Central Bank, education, Ecopetrol, amongst others.

What does the state procurement regime provide for foreigners?

- State entities must give a national treatment to goods and services from other States with which there is a trade agreement applicable to the procurement process; to goods and services with respect to which there is a national treatment by reciprocity; and to services from the Andean Community of Nations (CAN).
- In Colombia all public procurement processes are international processes, allowing foreign interested parties to participate directly without having to have a branch or subsidiary in the country.
- State entities must also verify the evaluation requirements and the representation of the interested parties in Colombian territory, whether or not they are domiciled in the country, since those who are not domiciled must accredit a proxy domiciled in the country.
- All documents of a public nature submitted by foreign individuals must be duly apostilled or legalized according to the country of origin and translated by an official Colombian translator in the event that there are documents that are intended to be accredited in a language other than Spanish.

What are the regimes of disqualifications and incompatibilities?

Disabilities are circumstances that do not allow an interested party to subscribe or be part of a contract, either for constitutional or legal reasons.

Incompatibilities, on the other hand are limitations with respect to the subscription and execution of a contract, due to circumstances related to a certain entity.

The concepts of inability and incompatibility establish prohibitions of various kinds, intended both for public employees and individuals, in order to achieve transparency, objectivity and impartiality in the public procurement process. As they are limitations to be able to contract with State entities, they must be expressly defined in the Law, without being able to make an extensive interpretation of them.

What is the Sole Registry of Bidders (RUP)?

It is the instrument by means of which those interested in participating in public procurement processes include in a public registry the corporate, financial and working experience information so that State entities are able to verify the legal, financial, organizational and experience capacity of each and every one of the bidders that submit a proposal in a public procurement process. Here are some of the main rules regarding the RUP:

- Any natural or legal party, national or foreign, domiciled in the country who wishes to participate in the public procurement processes.
- The RUP is requested and processed before the Chamber of Commerce within the jurisdiction of the domicile of the interested bidder.
- As established by the Law, individuals must renew the registration annually before the fifth day of April, at the Chamber of Commerce, under penalty of losing the registration.
- Foreign parties without domicile in the country are not required to have a RUP; however, they must submit their legal, financial and organizational documentation to accredit the requirements established in the bidding documents.

When is it not necessary to be registered in the RUP?

- In direct public procurement processes.
- Contracts for the provision of health services.
- Contracts whose value does not exceed 10 % of the lowest amount of the respective entity (minimum amount).
- In the disposal of State property.
- Contracts for the acquisition of products of agricultural origin or destination offered in legally constituted commodities exchanges.
- Contracts of industrial and commercial companies of the State and mixed economy companies.
- Concession contracts of any kind.
- Foreign natural or juridical parties without domicile in the country.

Which are the public procurement processes by which a contractor can be selected to contract with the State?

The objective of any public procurement process is to be able to identify the most favorable offer. In accordance with the above, and in order to guarantee the principles of freedom, equality, transparency, free competition and objective selection, there are several public procurement processes in Colombia:

Public bidding

it is a public process carried out by a state entity so that everyone who is considered suitable to meet the requirements related to legal, organizational, and financial capacity, experience and any other selection criteria may submit their respective bids and participate in the selection process.

Abbreviated selection

it is a modality of objective selection provided for those cases in which, due to the characteristics of the object to be contracted, the circumstances of the contract, the amount, or the purpose of the good, work or service, a simplified process can be carried out to ensure the efficiency of the contract management. It is only foreseen for some specific cases.

Minimum amount process

it is a process that may be carried out when the value of the contract is equal to or less than 10% of the lowest quantification of the contracting entity. This modality contemplates an expedited and special procedure stated in the Law.

Merit- based bidding

this type of process does not require a public call for bids and contractors are not required to have a RUP. In this order, State entities may subscribe contracts without the need to carry out a competitive selection process, thus saving time in the procurement of goods and/or services. This modality es only foreseen for some specific cases.

Finally, it is interesting to comment on the Colombian State´s virtual store, which is a transactional e-commerce platform through which purchasing entities carry out transactions in public procurement processes to acquire goods and services through price framework agreements; goods and services under demand aggregation contracts; and goods in the modality of Minimum Amount in large surfaces.

Is there a digital platform to monitor contractual processes?

All State entities must publish their procurement processes in the Electronic Public Procurement System (SECOP) so that the public is aware of them and can submit and comment on them.

Currently there is SECOP I and SECOP II. The first corresponds to the platform in which the State entities publish the information of the selection processes and therefore its essence is to publish the information corresponding to all the

State procurement processes. The second has a transactional nature to manage online all public procurement processes, in which entities and suppliers interact electronically. Currently, the interest of the State is that all entities migrate to SECOP II.

State entities that contract using public resources must publish all documents through SECOP within three days of their issuance.

What should the public contract include?

A public contract is a bilateral act that must be subscribed in writing, in which public resources are committed. It is understood as a Law for the parties; therefore, it is the main document that governs the contractual relationship between them. According to article 32 of Law 80 of 1993, Public contracts are all legal acts that generate obligations subscribed by entities referred to in this Law, special provisions or derived from the exercise of the autonomy of the will.



• **Validity and execution term:** when speaking of validity, it is understood that it is the total time in which the contract may be executed and liquidated, in case of needed. On the other hand, the term refers only to the time in which the contractor must execute the contract.

• **Additions:** except in concession contracts, including PPP projects, the regulation establishes that the Public contracts may not include additions of more than 50 % of their initial value.

• **Guarantees:** their purpose is to cover the risks that may arise. In Colombia they are required both from the bidders and from the final awardee of the contract.

Bidders submitting bids in a public procurement process must submit a bid bond, the amount of which, as a general rule is 10 % of the value of the bid budget. Likewise, bidders and contractors, in order to cover possible risks, may grant any of the following guarantees: insurance policy, commercial trust in guarantee or bank guarantee (for example a Stand-by letter of credit). Foreign parties or legal entities with no domicile or branch in the country may grant a stand-by letter of credit issued abroad.

Also, once the contract has been awarded, the successful bidder must submit a single performance bond, which covers the fulfillment of its obligations arising from the contract. Additionally, an extracontractual civil liability policy will be required, in accordance with the specifications established by the contracting entity.

• **Exceptional powers:** they are understood as powers that grant the contracting State entity unusual prerogatives that allow it to better achieve the State tasks or, at least, avoid or control the damages that may be generated, and ensure the immediate and continuous provision of the service. Such powers may include caducity, unilateral termination of the contract, unilateral interpretation of the contract, unilateral modification thereof, submission to national law, as well as the reversion clause in contracts for the exploitation and concession of State property. These powers may only be exercised by the State entity in the cases determined by the Law.



It is mandatory to agree upon them in:

- Contracts whose object is the exercise of an activity that constitutes a State monopoly.
- The provision of public services.
- Exploitation and concession of State-owned assets.
- Contracts related to the school feeding program.
- Construction contracts.



- **Fines:** the purpose of these fines is to compel the contractor to comply with its obligations by imposing a financial penalty in the event of default of partial noncompliance.

- **Penalty clause:** it is a way the parties of contract have to regulate the effects of the breach of the contract by anticipating the valuation of damages derived from the breach of contract.

- **Assignment of the contract:** public contracts are personal; therefore, once subscribed, they may not be assigned to a third party without their prior authorization of the contracting entity.

- **Payment method:** within the payment method, it is possible to agree on upfront payments, or advance payments (loans that must be subsequently amortized with each payment), without the amount exceeding 50% of the contract value.

- **Dispute resolution:** the general rule is that in case of impossibility to reach an agreement on disputes, the differences are resolved by the contentious-administrative jurisdiction. Likewise, the contracting parties may resort to arbitration, either national or international, which must be agreed upon the contract through the arbitration clause.

- **Liquidation:** once the contractual term has expired, in successive tract contracts and others that may be required, the liquidation of the contract will proceed, which has the purpose of making a final balance of the contract and a cross-checking accounts with respect to the obligations of the parties. This liquidation may proceed by mutual agreement, unilaterally or in court.

How does the Public Private Partnership (APP) regime work?

PPP contracts are defined as an instrument of private equity linkage, which is materialized in a contract subscribed between a State entity and a natural or legal party, for the provision of public goods and their corresponding services, involving the retention and transfer of risks between the parties and payment mechanisms related to the availability and level of service of the infrastructure and/or service.

It is used when State entities entrust a private investor with the Design, Building and Operation (DBO), or the Design, Building, Finance and Operation (DBFO), or the Design, Construction, Managing and Finance (DCMF), or the Operation and Maintenance (O&M), amongst others, of a public asset as well as its infrastructure.

They are executed at the risk and expense of the concessionaire in exchange for remuneration for the forementioned, who is entitled to collect resources from the economic exploitation of the project, to receive disbursements of public resources or any other remuneration.

The maximum term of execution is 30 years, including its possible prorogations. However, they may be subscribed for a longer period, provided they have the prior favorable opinion of the National Council for Economic and Social Policy (CONPES).

In order to begin, a comprehensive study of the project is required to analyze the cost-benefit, considering the economic, environmental and social impact, within which the principle of objective selection prevails.

In both public and private initiative projects, it is necessary to consult the procurement manuals, guidelines, circulars, directives, and other regulations issued by the public institutions generating the initiative or the corresponding territorial entity on which the project will be developed, since in such documents there may be processes and requirements that must be met at a certain stage of the project structuring. Particularly in the case of the District of Bogotá, we find the Directive 004 of June 18th 2019 of the Mayor's Office of the City, which establishes the guidelines in order to advance in the procedure for structuring, evaluating and approving PPP projects, in addition to giving conformation to the District PPP Committee that will be responsible for the evaluations of the initiatives and other functions, document of which we advise its consultation.



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