Public Procurement World - Colombia

3. Procurement Procedures

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# a. What procurement procedures can be followed?

Public entities have various procedures available to carry out public procurement. The general rule is that the transparency and objective selection principles must be observed. Although this is the general rule, the Procurement Statute offers mechanism to expedite procurement in the cases defined therein.

The procedures provided in the Procurement Statute are the following:

Public bid. Unless a specific rule provides that the selection of the contractor must be carried out through a different procedure, the Government-owned Entity must use this mechanism. The general principle is that once all bidders meet the minimum qualifications (experience, financial requirements, personnel available, etc,) the overriding awarding factor should be a mix of price and technical qualities offered. Additionally, and according to Law 1150 of 2007, state entities may decide to hold their public bid under a Reverse Auction Scheme if they find it appropriate.

Abbreviated selection. While similar to a public bid, this mechanism is shorter and simpler, and is generally used when the value of the contract to be awarded is considered to be low, in comparison to the public entity's overall budget, according to the criteria established by Law 1150 of 2007. It is also used to award contracts for the procurement of goods of standard quality such as stationery, common use machines, etc. When used to contract standard goods or services, the lowest price should be the key factor for the awarding of contracts.

Merit-based qualification. This procedure is used to select the entities or individuals that will provide Government-owned Entities with consulting services (e.g., the selection of an investment bank to privatize a Government-owned Entity or a lawyer to represent the entity in arbitration). Unlike other selection mechanisms, merit-based qualification or contest is usually not awarded on the basis of the lowest price criterion, but rather on the basis of experience and academic qualification. Therefore, consultants cannot be chosen on price, but rather by qualification.

Direct contracting. Entities are allowed to purchase goods or retain services without conducting competitive bidding in specific events, such as when there is an urgent need for the goods or services, when the value of the contract to be awarded is considered to be low, in comparison to the public entity's overall budget, according to the criteria established by Law 1150 of 2007, or when acquiring assets that are only provided by one competitor in the market. In practice, to avoid investigations by the controlling bodies, even in cases where direct contracting is allowed, the Government-owned Entity will use some form of competitive bidding, even if not subject to the same rules as provided in the other mechanisms.

De minims contracting. This is a very simple procedure used to award contracts for small values.

# b. What status do electronic means/procedures have?

According to Law 1150 of 2007 and Law 527 of 1999, proceedings, administrative acts, documents, contracts and, in general, acts derived from pre-contractual and contractual activity, may take place by electronic means.

In accordance to Decree 1510 of 2013, State Entities are required to publish their contractual activity in the Contracting and Purchasing System (SECOP) an electronic data base containing information on public procurement. This obligation is supported by the fact that the contracts are executed with taxpayer's resources to deliver goods and services to the population, and therefore, everyone should have access to the corresponding information.

Public entities may also hold an electronic auction when proceeding under a Reverse Auction Selection Process. If the State Entity decides to perform the auction electronically, it must clearly establish the system to be used for the auction in the terms of reference, as well as the security mechanisms in place. The Electronic Reverse Auction is a dynamic process of online price negotiation between pre-selected suppliers.

# c. Where are contract notices, i.e. calls for bid, published?

According to the Public Procurement Statute, invitations to undertake contacts with public entities must be published in mass distribution journals from 10 to 20 days before the tender is open. This notice must be published at three different moments, 3 to 5 days apart from each other.

Additionally, and according to Decree 1510 of 2013, public entities must publish invitations or summoning's in the public contracting and purchasing system (SECOP), an electronic data base containing information on public contractual relationships.

The SECOP web page is as follows: <https://www.contratos.gov.co/consultas/inicioConsulta.do>

# c. Can certain prospective bidders be excluded from the competition?

In principle, every competitive procedure for the selection of bidders should be open to any person that comply with the experience, financial and other technical qualifications required for the performance of the contract to be awarded. This means that grounds for exclusion of bidders should be general and not bidder-specific.

The Public Procurement Statute and concordant laws such as law 1474 of 2011, set forth several grounds that would prevent an individual or entity to participate in a public procurement procedure in the form of an incompatibility or inability regime. The general causes for exclusion of a person or company are, among others, the following:

those individuals or entities that cannot enter into contracts with a Government-owned Entity pursuant to the Constitution or the law;

those individuals or entities that were precluded by the law to enter into a contract with a Government-owned Entity on specific grounds and entered into a contract regardless of such prohibition (they become precluded to enter into other contracts that they would have been able to execute had they not breached the law);

those individuals or entities who were a party to a contract with a Government-owned Entity and whose contract was unilaterally terminated by the Government-owned Entity for material breach under the so-called declaration of caducity (contractual sanction consisting in the termination of the contract and banning form public procurement);

those individuals who have been judicially condemned to have their rights and public functions suspended (e.g., someone found criminally guilty for bribery);

those individuals or entities that refrained from performing a public contract that was awarded to them;

public officials; and

those with close family ties with a high ranking officer of the Government-owned Entity awarding the contract.

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