

External Circular Letter No. 13 of the 13th of June of 2014

To: Participants in the public purchasing and procurement system

Subject: Possibility to cure requirements and documents that do not give score

The National Public Procurement Agency -Colombia Compra Eficiente- pursuant to its purpose as the governing body of the public purchasing and procurement system hereby determines guidelines regarding the possibility to cure the offers in matters that do not give score in the Procurement Processes.

A. Requirements and documents that can be cured

The absence of requirements or documents regarding the future procurement that are not necessary to compare offers are not sufficient reason for their rejection, according to paragraph 1 of article 5 of Law 1150 of 2007.

In consequence, the State Entities can ask the bidders to cure the requirements of the offer that do not affect the allocation of score, and the bidders can cure such requirements up until the moment of the awarding, excepting in the selection processes with auction, in which the bidders must cure such requirements before the start of the auction.

The offer is the project of a legally binding agreement of an irrevocable nature made by a person and communicated to another and which contain the essential elements of the business¹. The offer filed in a Procurement Process must contain the acceptance of the bid terms, including the assessment factors that allow establishing the order of eligibility of the bidders.

The regulation demands that bidders, among other things, (i) be registered in the Sole Bidders' Registry –RUP– with the exception of the express exceptions²; and (ii) submit, together with the offer, a bid bond³. The failure to comply with these demands conditions the validity of the offer and therefore the bidder must comply with them prior to the awarding for the State Entity to consider its offer in the Procurement Process.

In this circular letter we only review the consequences of not accrediting the requirements mentioned in items (i) and (ii) with the presentation of the offer.

(i) Registration in the RUP

In the Procurement Processes the bidders must accredit that they are registered in the RUP, even when they file their offer before their registration is firm. However, while the registration is not firm, the State Entity cannot consider that the bidder is qualified and evaluate his offer.

(ii) Bid bond

The filing of the bid bond can be accredited after the filing of the offer, and the correction of errors contained in it can also be accredited before the awarding⁴.

B. Possibility to cure requirements and the evaluation report

1 Articles 845 y 846 of the Commerce Code.

2 Article 6 of Law 1150 of 2007.

3 Article 7 of Law 1150 of 2007

4 Paragraph 1 of article 5 of Law 1150 of 2007.

If in a Procurement Process there are bidders who did not accredit requirements that do not affect the scoring with the original filing of the offer the State Entity in the evaluation report must state so and warn that the respective offer will not be assessed before the bidder accredits such requirements. The bidder can cure such requirements at any moment prior to the awarding or the auction.

If the bidder cures and accredits those requirements in a timely manner, the State Entity must update the assessment report and publish it in the SECOP, including the offer subject of curing⁵ in the assessment. The State Entities must also make the new assessment report known in the awarding hearing, if such hearing takes place, and they can receive the pertinent observations up to the awarding.

Based on the principle of economy and the objective of efficiency of the public purchasing and procurement system, the State Entity must decide if it is necessary to grant a term for the filing of observations about the new assessment report.

Sincerely,



María Margarita Zuleta González
General Director

Regulatory Reference

Articles 5, 6 and 7 of Law 1150 of 2007

Articles 824, 845 and 846 of the Commerce Code

Item 8 of article 30 of Law 80 of 1993 and Item 4, article 59; item 3, article 41; item 2, article 67 and item 5, article 85 of Decree 1510 of 2013

State Council, Contentious Administrative Chamber, Third Section, Subsection C, Issuing Judge Enrique Gil Botero, 26 February 2014, filing 13001-23-31-000-1999- 00113-01 (25.804).

⁵ The publication proceeds in the term determined by article 19 of Decree 1510 of 2013.