



# Manual for the management of the incentives in the Procurement Processes

<b>Introduction</b> .....	<b>3</b>
<b>I. Promotion of the national industry</b> .....	<b>3</b>
A. General obligations .....	3
1. Promotion of national goods and services.....	3
2. Promotion of the incorporation of national component in foreign goods and services .....	4
3. Foreign Goods and services with national treatment .....	5
B. What must the State Entities do in the Procurement processes? .....	<b>5</b>
<b>II. Limited calls to Mipyme</b> .....	<b>7</b>
A. General conditions .....	7
1. Limited calls .....	7
B. What must the State Entity do in the Procurement Process? .....	9
<b>III. Tie break factors</b> .....	<b>10</b>
A. When is there a tie? .....	10
B. How to define the successful bidder when there is a tie in the evaluation of the offers? .....	10
C. How does the State Entity apply the tie break factors while respecting the Commercial Agreements? .....	11
D. What must the State Entity do in the Procurement Process .....	11

## Introduction

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Colombia Compra Eficiente present this Manual for the management of the incentives in Procurement Processes addressed to the participants in the Public Procurement System.

The Manual presents the incentives established in the regulations for (I) the promotion of national goods and services; (II) the possibility of limiting the bid processes of Mipyme (SMEs) to the Procurement Processes; and, (III) the preference in conditions of tie of the national goods and services, the Mipyme, as well as the population in conditions of disability; among others.

The capitalized expressions utilized in this document must be construed according to the definition contained in Decree 1082 of 2015 and are used in the singular or plural as the context requires. The terms not defined must be construed according to their natural and obvious meaning.

## Promotion of the national industry

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### A. General obligations

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The State Entities – excepting the utility companies – with the objective to promote the national industry, must include in their Procurement Processes measures for the promotion of national goods, services or national labor. This promotion includes the incorporation within the Documents of the Procurement Process of a score for (i) the promotion of national goods and services; and, (ii) the Promotion of the incorporation of national component in foreign goods and services. One same good or service cannot apply to the two scores because one good cannot be national and foreign at the same time.

These scores must be included in all the Procurement Processes, except: (i) when the direct selection of the contractor applies, notwithstanding the procurement regime applicable; (ii) in the abbreviated selection Procurement Processes for the acquisition or supply of Goods and Services of Uniform Technical Characteristics the subject matter of 1150 of 2007; and, (iii) in the minimum amount Procurement Processes the subject matter of Law 1150 of 2007.

#### 1. Promotion of national goods and services

The State Entities must assign, within the criterial for the evaluation of the offers, a score of within ten and twenty per cent to stimulate the offer of national goods and services<sup>1</sup>.

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1. External Circular 7 of 2013 issued by Colombia Compra Eficiente establishes that this percentage must be of 20% in the Procurement Processes to acquire Colombian agricultural goods, both fresh and processed products

Are national goods the goods entered in the Registry of Producers of National goods –RPBN –. Are national services the services provided by Colombian individuals or by those who are Residents in Colombia or by legal entities incorporated pursuant to the Colombian legislation.

***(a) When is a good national?***

A good is national if it is registered with the RPBN<sup>2</sup>.

For the RPBN are national goods: (i) those fully obtained in the Colombian territory; (ii) the goods made in the country with national materials; and, (iii) goods that have experienced a substantial transformation as a function of a minimum percentage of National Added Value or a substantial productive process.

The RPBN is managed by the Ministry of Trade, Industry and Tourism. It can be requested and consulted at the Sole Foreign Trade Window; also, it utilizes the goods' tariff classification.

In consequence, the points for the promotion of the national goods should only be granted to the bidder if it has the respective RPBN for the goods offered.

***(b) When is a service provided by a natural person a national one?***

A service is national if it is provided by a Colombian individual, or by a natural person who is a resident in Colombia<sup>3</sup>.

The Colombian I.D. card certifies the nationality. The Residency Visa certifies the residence.

***(c) When is a service provided by a legal entity a national one?***

A service is national if it is provided by a legal entity incorporated in the country, which is verified with the certificate of existence and incumbency, if the domicile of the legal entity is located in the national territory.

**2. Promotion of the incorporation of national component in foreign goods and services**

The State Entities must also assign within the criteria for the evaluation of the offers a score of between five and fifteen per cent to stimulate the incorporation of national goods into foreign goods and services. This score, as well as the one determined for the promotion of national goods and services is not a part of the quality items to be rated in the Procurement Processes.

Colombia Compra Eficiente suggest to include in the bidding terms different portions to rate the promotion of national goods and services and the Promotion of the incorporation of national component in foreign goods and services.

The incorporation of goods is made by means of the incorporation of Colombian component in foreign goods.

2. Decree 2680 of 2009 regulates the RPBN.

3. For further information, consult the Passbook about the Colombian Nationality of the Ministry of Foreign Affairs, available at its website ([http://www.cancilleria.gov.co/sites/default/files/tramites\\_servicios/nacionalidadpdf.pdf](http://www.cancilleria.gov.co/sites/default/files/tramites_servicios/nacionalidadpdf.pdf))

The incorporation of services is made through the enrollment of individuals or legal entities that provide professional, technical or operational services. The allocation of points by the incorporation of these services is different from the possibility set forth in some Commercial Agreements for the procurement of local personnel in rural areas, in order to boost employment and to improve the living conditions in those areas<sup>4</sup>.

### **3. Foreign Goods and services with national treatment**

The State Entities must allocate the score of the national goods and services to the goods and services to which the State Entity must grant national treatment. The State Entities must give national treatment to (i) the goods and services of other States with which there is a Commercial Agreement applicable to the Procurement Process; (ii) to the goods and services regarding which there is national treatment by reciprocity<sup>5</sup>; and, (iii) to the services from the Andean Community of Nations – CAN –.

## **B. What must the State Entities do in the Procurement Processes?**

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The promotion of the national industry requires carrying out some activities in the Procurement Process.

The main activities to be carried out in the stages of planning, selection and execution of the State Entities governed by Laws 80 of 1993 and 1150 of 2007 are enunciated below. These activities must be incorporated in the relevant stages in the Procurement Processes of the State Entities that have a special regime.

In the planning stage, the State Entities must identify the contractual purpose and determine whether or not the same is a good and/or service; identify the goods<sup>6</sup> and/or services to be rated in the Procurement Process; the conditions of incorporation of national goods and/or services in foreign goods and/or services; and, the manner in which they will verify the nationality of the goods and/or services.

A good identification of the contractual purpose allows a good definition of the scores to be included for the promotion of the national industry. In this way, it is necessary to identify whether or not the contractual purpose is a good; a service; or, a good and a service. Likewise, if the Procurement Process includes one or several goods or services.

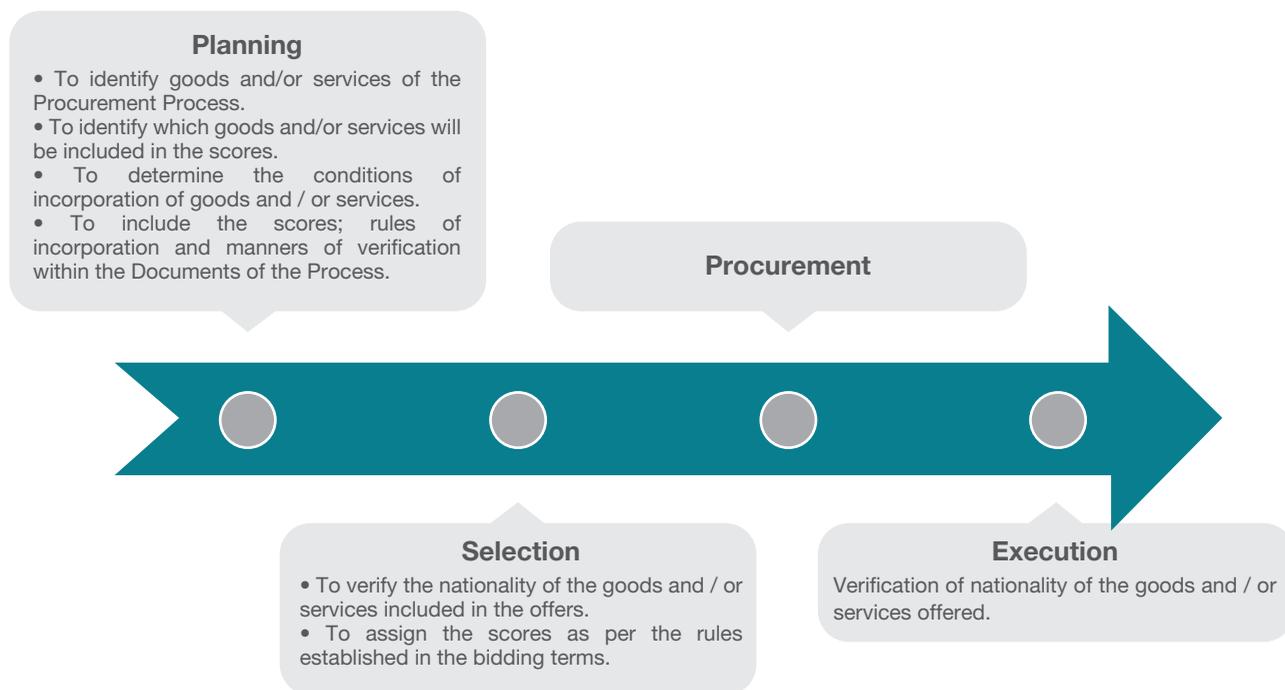
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4. Article 2.2.1.2.4.1.2 of Decree 1082 of 2015 includes the provisions related to the concurrence of several Commercial Agreements

5. The certifications of national treatment due to reciprocity are available at Colombia Compra Eficiente's website (<https://www.colombiacompra.gov.co/compradores/secop-i/certificados-de-trato-nacional-por-reciprocidad>).

6. Colombia Compra Eficiente recommends to include in the bidding terms the tariff item the subject matter of verification in the RPBN.

## Graph 1. Procurement Process – Promotion national industry



The State Entity must state in the bidding terms the manner in which it allocates the score, defining, for example, the allocation of points to each national good or national – treatment good accredited by the bidders; among other options<sup>7</sup>.

For the examples set forth above, in a Procurement Process for the acquisition of three goods, the first option could give to good 1 a score of x; to good 2 a score of y; and, to good 3 a Score of z. The second option was utilized by Colombia Compra Eficiente in the Uniforms’ Prices Master Agreement<sup>8</sup>.

Regarding the score for the incorporation of national component or the national treatment in foreign goods and/or services, the State Entity can grant points for the inclusion of national goods in the manufacture of foreign

7. For example, the following variables could be included in a Procurement Process for the acquisition of uniforms:

- Rate the nationality of the goods (between 10 and 20% of the total points).
- Rate the incorporation of domestic fabrics and threads in the foreign goods (between 5 and 15% of the total points).
- Identify in the planning stage the tariff items that would be verified in the RPBN.
- For national goods, the highest score is obtained by the bidder that has more tariff items recorded in the RPBN. This Score is the base to rate all other bidders in a proportional manner.

Include in the technical data sheets additional requirements to prevent the contraband; and, the supplanting of foreign goods as national goods.

8. The Documents of the Procurement Process are available at the following link <https://www.contratos.gov.co/consultas/detalleProceso.do?numConstancia=14-1-124698>.

goods; the incorporation of national services in the provision of foreign services; and by the incorporation of national goods in the provision of foreign services. So, for example, in the bidding terms for a public work (that due to its nature corresponds to the provision of construction services) it is possible to rate the incorporation of national goods.

In the selection stage, the State Entities must – according to the rules established in the bidding terms – verify the nationality of the goods and / or services and assign the scores included in the bidding terms for the promotion of the national industry. And, in the execution stage, the State Entities must verify the nationality of the goods and/or services offered in the offer.

## || Bid process limited to Mipyme (SMES)

### A. General conditions

To “facilitate the affirmative actions in the public procurement with micro, small and medium companies, in order to promote the development thereof and to promote the creation of enterprise as an adequate instrument to generate jobs”<sup>9</sup>, Law 1150 of 2007 includes the possibility of limiting the participation exclusively to Mipyme.

The public tenders, abbreviated selections and merit contest of which the amount is lower than US \$125.000 dollars that are the subject matter of Law 1150 of 2007 can be limited to these company sizes.

#### 1. Limited bid process

In a limited bid process, only the offer from micro, small or medium companies – Mipyme – that have at least one year of existence are received. So, if the calling for a Procurement Process is limited to these company sizes, the offers made by large companies must be rejected.

##### ***(a) What is a Mipyme (SME)?***

A company is a Mipyme when, besides being a national company, it has up to two hundred workers and total assets for an amount equal to or lower than thirty thousand minimum legal monthly salaries currently in force (SMMLV for its Spanish initials).

##### ***(b) When does the calling is limited in a Procurement Process?***

A calling in a Procurement Process must be limited to Mipyme when:

9. Constitutional Court. Plenum. Sentence C 862 of 2008. Issuing Judge: Marco Gerardo Monroy Cabra

(1) The amount of the Procurement Process is lower than US \$125.000 dollars<sup>10</sup>; and,

(2) At least three Mipyme express their interest in limiting the process to those company sizes in the term established between the publication of the prior studies and documents and one business day before the Opening of the Procurement Process.

In case that these two requirements are met and the bid process is limited to Mipyme, Colombia Compra Eficiente recommends to include said mention in the administrative act of opening, without prejudice to including this mention in the bidding terms.

***(c) Which requirements must be met by the Mipyme?***

To express the interest in limiting the bid process to Mipyme, these companies must accredit, besides the fact that they have existed for more than one year, their size, by means of a certificate issued by the legal representative and by the external auditor, if it has the obligation to have one, or by the accountant, in which the Company informs its corporate size.

Likewise, in order to make offers in the bid processes limited to Mipyme, the companies must also accredit, besides their size, that they have existed for at least one year.

***(d) What requirements must be met by the Mipyme companies that do not carry out commercial acts or operations?***

Some activities are not considered as commercial and in consequence do not require to be recorded in the Commercial Registry<sup>11</sup>, such as, for example, the provision of services inherent to the so – called liberal professions.

In these cases, the State Entity carries out the verification of the domicile and of the size of the company with the RUP certificate. On its part, the accreditation of the minimum experience must be calculated as from the termination and approval of the higher education academic curriculum, excepting for the professions related to the social security system in health, in which the professional experience must be calculated as from the enrollment or professional registration.

***(e) How to limit a bidding process by territory?***

The State Entities can limit a calling to the Mipyme domiciled in the departments or municipalities in which the contract will be performed if the State Entity receives requests of at least three Mipyme domiciled in the respective department or municipality. For such purposes, the bidders must, together with the expression of interest, accredit their domicile with the commercial registration; the certificate of existence and incumbency of the company; or, the RUP for non – businessmen natural persons.

10. The amount in pesos until the 31st of December of 2015 is of 228'842.000 pesos.

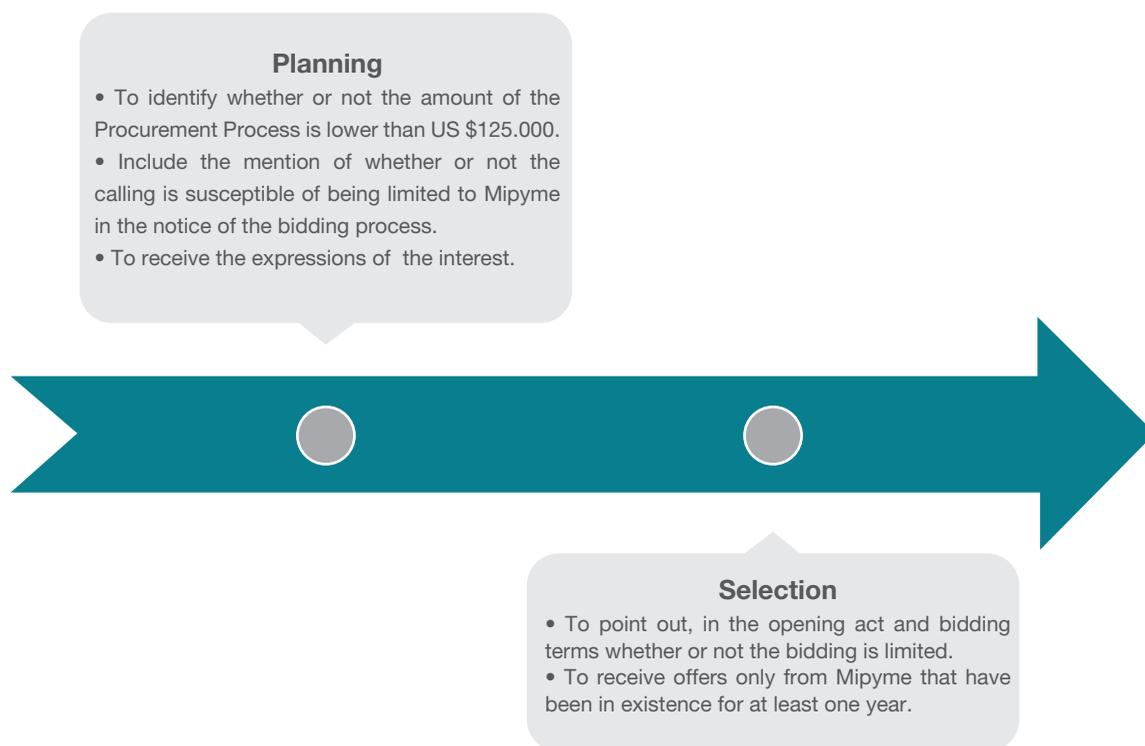
11. Commerce Code. Article 23.

## B. What must the State Entity do in the Procurement Process?

The limitation of the bidding process to Mipyme supposes the performance of some activities in the Procurement Process.

The main activities to be carried out in the planning and selection stages are:

### Graph 2. Procurement Process – Limited Bidding



Hence, in the planning stage, the State Entities must identify if the amount of the Procurement Process is lower than US \$125.000; and, if such is the case, state it in the notice of the process and receive the expressions of interest to limit the calling up to one business day before issuing the administrative act of opening.

In the selection stage, if at least three Mipyme expressed their interest in limiting the bid process, in a general manner, to Mipyme or by territory, the same must be limited and, in consequence, to receive offers from companies that accredit such company size. On the contrary, if the expressions of interest are not presented, it is not possible to limit the calling as a function of the size of the company.



### A. When is there a tie?

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In the selection stage of the Procurement Processes two or more offers can be tied in the first place of the eligibility order, even though it is not the desired scenario – because the utilization of the tie break factors must be exceptional –.

Two offers are tied when they obtain the same number of points after applying the rules established in the bidding terms, or offer the same price in the cases of minimum amount.

### B. How to define the successful bidder when there is a tie in the evaluation of the offers?

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If once the offers have been assessed there is a tie in the first place of the eligibility order, the regulations for the minimum amount establish that the State Entity will accept the offer that was first submitted. For all other Procurement Processes, it includes the utilization of rules to select the successful bidder, which must be applied in a successive and excluding manner.

The rules are as follows:

1. To prefer the offer that has the highest score in the first of the grading factors established in the bidding terms.
2. To prefer the offer that has the highest score in the second of the grading factors established in the bidding terms and so on until exhausting all the grading factors established in the bidding terms.
3. To prefer the offer of national goods or services over the offer of foreign goods or services.
4. To prefer the offer made by a Mipyme; or, consortium, temporary union or promise of a future company formed exclusively by Mipyme<sup>12</sup>.
5. In case that in the Procurement Process there are no offers filed by Mipyme or plural bidders formed exclusively by Mipyme, to prefer the offer filed by a consortium, temporary union or promise of a future company provided that: (a) it is made up by at least one Mipyme that has a share of at least twenty five

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12. In case that the offers made by Mipyme and plural bidders wholly formed by Mipyme are preferred, the next rule to be applied is the one contained in item 6, and not that of item 5

per cent; (b) the Mipyme contributes a minimum of twenty five per cent of the experience accredited in the offer; and, (c) neither the Mipyme, nor its shareholders, partners or legal representatives are employees, partners or shareholders of the members of the consortium, temporary union or promise of future company.

6. To prefer the proposal presented by the bidder who accredits in the conditions established in the law that at least ten per cent of its payroll is in condition of disability according to the rules contained in Law 361 of 1997. If the offer is filed by a consortium, temporary union or promise of a future company, the member of the bidder who accredits that ten per cent of its payroll is in a condition of disability, must have a share of at least twenty five per cent in the consortium, temporary union or promise of a future company and contribute a minimum of twenty five per cent of the experience accredited in the offer.

7. Utilize a random method.

### **C. How does the State Entity apply the tie break factors while respecting the Commercial Agreements?**

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When in the evaluation of the offers a Commercial Agreement is applicable, it is not possible to apply the tie break factors set forth in items 4 and 5 of literal B above.

### **D. What must the State Entity do in the Procurement Process?**

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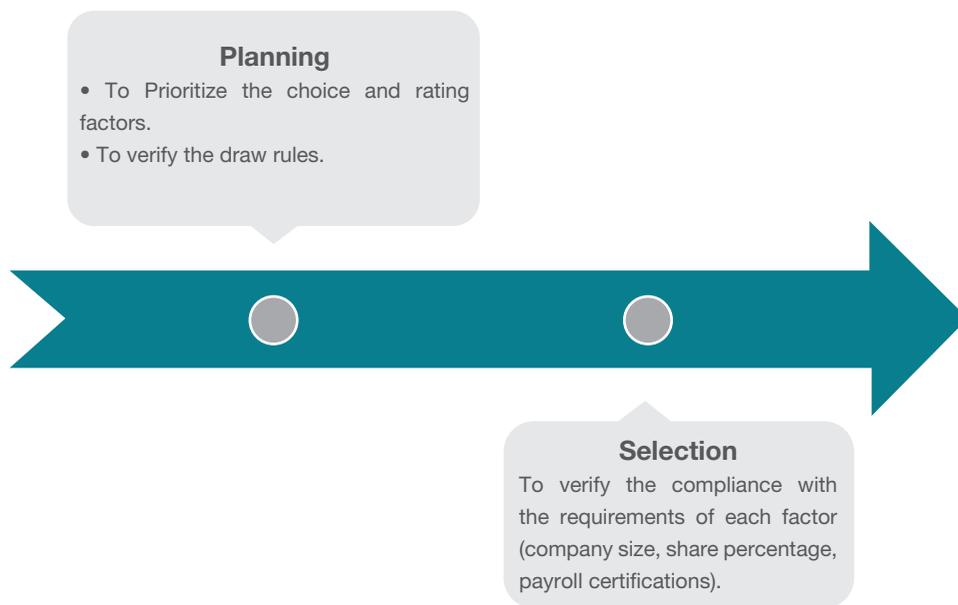
The tie break rules are established in the legal and regulatory provisions. In any case, they assume the performance of some activities in the Procurement Process.

The main activities to be carried out in the planning and selection stages are:

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10. Other special provisions such as the third part of letter c del item 4 del article 2 of law 1150 of 2007 and the Sole Disciplinary code contained causes of incompatibility.

11. Comprises the members of same-sex couples according to Ruling C-029 of 28 January 2009.



Hence, in the planning stage, the State Entities must prioritize the choice and grading factors to be able to apply factors 1 and 2 established in literal (C) of this chapter; and to define the rules for the draw. In the selection stage, in cases of tie they must verify the compliance with the conditions established for each factor.