



Colombia Compra Eficiente



Manual of the minimum amount selection modality

M-MSMC-02

 GOBIERNO DE COLOMBIA



Manual of the minimum amount selection modality

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Introduction

The faculties of Colombia Compra Eficiente include to make and disseminate instruments and tools that facilitate the public purchases and procurement and to promote the best practices, efficiency, transparency and competitiveness.

Pursuant to this duty, it has written this manual of minimum amount selection modality , the purpose of which is to clarify the special characteristics, procedure and nature of this selection modality to make more efficient and effective its use by the State Entities.

Definitions

The capitalized expressions utilized in this document must be construed according to the meaning thereof established in Decree 1082 of 2015. The terms defined are utilized in the singular and in the plural, as the context in which they are utilized requires. The terms not defined must be construed according to their natural and obvious meaning.

01 What is the minimum amount selection modality ?

The minimum amount selection modality is a simple and quick procedure to choose the contractor for the acquisition of the goods, works and services of which the amount does not exceed ten per cent (10%) of the minimum Amount of the State Entities. This selection modality has less formalities than the other ones and also has special characteristics.

The minimum amount selection modality is applicable to all the contracting purposes when the official budget of the contract is equal to or lower than the minimum Amount of the State Entity, notwithstanding the nature of the contract.

The rules applicable to the minimum amount selection modality are those established in item 5 of article 2 of Law 1150 of 2007, as amended by article 94 of Law 1474 of 2011, and it is not possible to add further requirements, procedures or formalities.

02 How is the value of the minimum amount determined?

The minimum amount is the amount equivalent to ten per cent (10%) of the lower amount of a State Entity. The procedure to establish the lower amount is described in letter (b) of article 2 of Law 1150 of 2007 which is the guide to determine the lower and the minimum amount of a State Entity.

Annual Budget of the State Entity (SMLMV)	Lower amount (SMLMV)	Minimum amount (SMLMV)
Equal to or higher than 1.200.000	1.000	100
Between 850.000 and 1.200.000	850	85
Between 400.000 and 850.000	650	65
Between 120.000 and 400.000	450	45
Less than 120.000	280	28

The State Entities must carry out the Procurement Processes whose official budget does not exceed the value of its minimum amount by the minimum amount selection modality.

03 Process Documents of the minimum amount modality

The Process Documents of the planning phase of the minimum amount Procurement Process are:

A. Prior studies

The prior studies must contain:

- The succinct description of the need that the State Entity intends to satisfy with the procurement.
- The description of the objective to be contracted identified with the fourth level of the Classification of Goods and Services
- The technical conditions required.
- The estimated value of the contract and its justification.
- The term of execution of the contract.
- The budget availability certificate that supports the procurement.
- If included, the guarantees enforceable against the contractor.
- Terms of payment, if a term was established by the State Entity.

Colombia Compra Eficiente recommends to see the Sector Analysis Manual and the Manual for the Identification and Coverage of the Risk in <https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias>.

B. Invitation to bid

The Invitation to bid must contain:

- The description of the purpose to be contracted, identified with the fourth level of the Classification of Goods and Services.
- The technical conditions required.
- The estimated value of the contract and its justification.
- The manner to accredit the legal capacity.
- The manner to accredit the minimum experience, if included.
- The manner to accredit the compliance with the technical conditions.
- The minimum financial capacity and manner to verify the compliance thereof when the payment is not against the delivery of the work, good or service.
- The schedule.
- The term or conditions of the payment on the charge of the State Entity.
- The indication of the requirement of guarantees, when required.

C. Procurement Process' Closing Minutes

It is the document made by the State Entity to certify the presentation of the offers that must certify the name of the bidder and the time in which the offer was submitted. The State Entity must publish in the SECOP the closing minutes at the time established for such purposes in the schedule of the Procurement Process and if the latter did not establish the relevant date, it must be published no more than one business day after the date of presentation of the offers.

D. Request to cure documents

The State Entity can ask the bidders to cure inconsistencies or errors, provided that the correction of the inconsistencies or of the errors does not mean a reformulation of the offer.

E. Evaluation report

The evaluation report must indicate whether or not the bidder complied with the enabling requirements or with other requirements established in the Invitation to bid, the amount of their offer and the date and time of presentation of the offer.

F. Communication of acceptance of the offer

The State Entity must accept the offer of the bidder who has met the requirements established in the invitation and who has offered the lowest price, by means of an electronic or physical document. In the acceptance document, the State Entity must state the contract supervisor.

If there is a tie, the Entity must accept the offer presented first in time.

The offer and the communication of acceptance thereof form the contract and the two documents must be published in the SECOP on the date established in the schedule and if it was not established, the recommendation is to publish them one business day after the awarding. The communication of acceptance of the offer is the act of adjudication.

G. Performance

The performance stage starts with execution of the contract¹ and it goes up to the completion of the contractual purpose. The State Entity must exercise the supervision of the contract to establish whether or not the obligations agreed were performed in full.

04 Which are the characteristics of the minimum amount selection modality?

Considering that this selection modality is designed for works, goods and services of small amounts according to the budget of each State Entity, Law 1150 of 2007 and Decree 1082 of 2015 have established some special characteristics for this procedure:

A. The price is the factor of selection

The price is the bidder's selection factor. In other words, the State Entity must award the Procurement Process to the bidder who meets all the conditions required by the State Entity in the Process Documents (prior studies and Invitation to bid), and who offers the lowest price. There are no scores to evaluate the offers regarding the characteristics of the contract's purpose, its quality or conditions.

The State Entity must review the economic offers and verify that the one with the lowest price meets the conditions of the invitation to bid. If it does not meet the conditions of the invitation to bid, the State Entity must verify the compliance with the requirements of the invitation to bid of the offer with the second best price, and so on and so forth.

1. Exceptionally the State Entity can demand guarantees, case in which case the performance starts with the approval thereof

B. Procurement Process with less formalities

In the minimum amount selection modality, the State Entity does NOT have to bear in mind the following formalities and procedures applicable to the other selection modalities of:

- Sole Bidders' Registry (RUP). The bidders in the minimum amount selection do not have the obligation to accredit the registration with the Sole Bidders' Registry – RUP – or to file the respective certificate. The State Entities must verify, in a direct manner, the enabling requirements that may be required².
- Minimum contents of the prior studies and documents, of the calling notice and of the bidding terms. In the Minimum amount selection modality, the compliance with the requirements set forth in a general manner for the prior studies and documents, the calling notice and the bid terms, listed in articles 2.2.1.1.2.1.1, 2.2.1.1.2.1.2 and 2.2.1.1.2.1.3 of Decree 1082 of 2015 must not be demanded.
- National Industry Incentives. The incentives to the national industry governed by Law 816 of 2003 and by article 2.2.1.2.4.2.1 of Decree 1082 of 2015 are not applicable to the minimum amount selection modality. This means that no score formulas must be defined because of the origin of the goods and services.
- Calling limited to SMES. In the minimum amount selection modality, it is not possible to limit the calling to SMES in the terms of article 12 of Law 1150 of 2007, as amended by article 32 of Law 1450 of 2011, and of article 2.2.1.2.4.2.2 of Decree 1082 of 2015.
- Residual Capacity for public works' contracts. In the public works' Procurement Processes in the minimum amount selection modality, the State Entity must not establish Residual Capacity or Contracting K, or require it from the bidders.
- Formalities of the contract. In the minimum amount selection modality, the entire agreement between the State Entity and the contractor is made up by: (a) the offer submitted by the bidder; and (b) the communication of the State Entity in which it accepts the offer.

That is why the Process Documents must be complete in the definition of the need of the State Entity, the subject of the contract, the quantity and quality of the goods or services, the technical characteristics, operation guarantees and all the conditions necessary to verify the compliance with the terms required by the State Entity for the bidder to be bound by the submission of the offer to fully satisfy the need of the State Entity.

2. See recommendations for the definition of enabling requirements in section 4.D of this Manual.

C. Guarantees

The State Entities do not have the obligation to demand guarantees in the minimum amount Procurement Processes. If the State Entity decides to demand guarantees in the minimum amount selection processes, it must be a consequence of the Risk of the Procurement Process and of the economic sector to which the possible bidders belong.

Colombia Compra Eficiente recommends to consult the Manual for the Identification and Coverage of Risks at <https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias>.

D. Enabling requirements

First of all, it is important to bear in mind that in the minimum amount Procurement Processes the State Entity must not request the RUP certificate. The State Entity must verify, in a direct manner, the legal capacity, the experience and the financial capacity.

1. Legal capacity

The legal entities accredit their legal capacity with the certificate of existence and incumbency issued by the commerce chamber of their domicile, which must have been issued within thirty (30) calendar days before the date of presentation or by the entity competent to issue such certificate.

The State Entity must verify the legal capacity of a legal entity checking the following aspects:

- (a) The corporate purpose of the legal entity for the purposes of verifying that it is authorized to comply with the contract's purpose. The corporate purpose can be found in the certificates of existence and incumbency.
- (b) The capacity as legal representative of the person entering into the offer, which is verified with the registration of the legal representative in the certificate of existence and incumbency.
- (c) The powers of the legal representative of the legal entity to submit the offer and to force the legal entity to comply with the purpose of the contract, which is verified with the registration of the legal representative in the certificate of existence and incumbency.
- (d) The absence of disqualifications, incompatibilities or prohibitions of the legal entity to enter into contracts with the State. This requirement must be verified by the State Entity with the presentation of a declaration of the legal entity in which it certifies that neither the legal entity nor its legal representative have incurred in disqualifications, incompatibilities or prohibitions. In addition, the State Entity must consult the judicial record information systems of Office of the Attorney General of the Nation and of the Office of the Controller General of the Republic.

The State Entity must verify the legal capacity of the natural persons, as follows:

- (a)** The legal age, which is accredited with the Colombian I. D. Card, for Colombian nationals, and with the Foreign I. D. Card or the passport for the foreigners. The mere presentation of this document is enough to accredit the legal capacity.
- (b)** The absence of limitations of the legal capacity of the individuals. This requirement must be verified by the State Entity with the presentation of a declaration of the individual in which it certifies that it has full capacity and that it has not incurred in disqualifications, incompatibilities or prohibitions and in addition the State Entity must consult the judicial record information systems of the General Attorney Office of the Nation and of the Office of the Controller General of the Republic.

2. Experience

The State Entities do not have the obligation to establish an enabling requirement of experience in the minimum amount Procurement Processes. If the State Entity decides to establish an enabling requirement of experience, it must be a consequence of the Risk of the Procurement Process, of the characteristics of the sector and of the contract's purpose, and it must refer to the experience of the bidder in the activities the subject matter of the Procurement Process.

If the State Entity requests enabling requirements of experience, it must ask for copies of contracts or certificates issued by third parties who received from the bidder the goods, works or services the subject of the Procurement Process.

3. Financial Capacity

The State Entity can demand a minimum financial capacity in the minimum amount Procurement Processes when it pays before the delivery to its satisfaction of the goods, works or services.

Colombia Compra Eficiente recommends to consult the Manual to determine and verify the enabling requirements in the Procurement Processes at <https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias>.

E. Terms of the minimum amount Procurement Process

The terms of the minimum amount Procurement Process are shorter than those established for the other selection modalities. The term to present offers is of at least one business day as from the date of the publication of the invitation and, of course, the invitation must have been published for at least one business day.

Colombia Compra Eficiente recommends that the publication of the Process Documents is made on the business day in which it carries out the respective act, to be consistent with the extension of the terms established for this selection modality.

05 Concurrence of two selection modalities for one same contractual purpose

In the following cases there is a conflict of the provisions contained in article 2 of Law 1150 of 2007 because the Minimum amount selection modality concurs with other selection modalities. In these cases, it is necessary to resort to the general principles established in Law 80 of 1993 to decide which selection modality must be utilized, since article 23 of Law 80 of 1993 establishes that the activities in the Procurement Process must be carried out according to the principles of transparency, economy and responsibility, and the law and the constitutional jurisprudence regarding the conflict in the application of standards of the same hierarchy establishes that the provision of a special nature prevails over that of a general nature³.

A. Concurrence of direct contracting and minimum amount

The selection modalities of minimum amount and of direct contracting concur when: (a) the budget of the Procurement Process is lower than or equal to the minimum amount of the State Entity; and (b) there is a cause of direct contracting for the purpose of the Procurement Process according to item 4 of article 2 of Law 1150 of 2007, as in the case of the provision of professional services and of services in support of the performance or for the inter - administrative contracts.

The purpose of the principle of economy contained in Law 80 of 1993 is that in the selection of the contractor, the State Entity complies with and establishes the procedures and stages that are strictly necessary to ensure the objective selection of the most favorable offer⁴, with austerity in terms of time, means and expenses⁵. In consequence, considering that the causes of direct contracting are special and express versus other selection modalities and that the direct contracting allows to obtain a greater economy in the Procurement Process, in the case of concurrence of the direct contracting and of the of minimum amount, the selection modality applicable is that of direct contracting.

B. Concurrence of abbreviated selection by Framework Agreement and minimum amount

The modalities of minimum amount and abbreviated selection by Framework Agreement concur when:

(a) there is a Framework Agreement in force for the good or service the subject matter of the Procurement Process and the State Entity has the obligation to acquire the Goods and Services of Uniform Technical Characteristics pursuant to the Prices' Master Agreements⁶ in force; and (b) the budget of the Procurement

3. Law 57 of 1887; Sentence C-005-96 of the Constitutional Corte dated on 18 January 1996, Issuing Judge José Gregorio Hernández Galindo, Sentence C-576-04 of June 8 of 2004, Issuing Judge. Jaime Araujo Rentería, among other rulings.

4. Item 1 of article 25 of Law 80 of 1993 and article 5 of Law 1150 of 2007.

5. Paragraph 5 of article 2 of Law 1150 of 2007 and article 2.2.1.2.1.2.7 of Decree 1082 of 2015.

6. Item 1 of article 25 of Law 80 of 1993 and article 5 of Law 1150 of 2007.

Process is lower than or equal to the minimum amount of the State Entity.

The acquisition pursuant to a Framework Agreement is the particular provision for the acquisition of Goods and Services of Uniform Technical Characteristics; in consequence, when there is a Framework Agreement for the acquisition of this type of goods and services, the State Entity must acquire them according to it.

It is important to bear in mind that the Framework Agreement is the result of a public tender process and, through it, the State seeks economies of Scale by acting as one single buyer. The State Entities participate in the Prices' Master Agreements through the placement of purchase orders. For those purposes, they must fill a summarized prior study in the Online Store of the Colombian State and place the purchase order with the Supplier that offers the best conditions as determined by each Prices' Master Agreement.

By virtue of the foregoing, Colombia Compra Eficiente considers that regarding the conflict of the application of the of abbreviated selection modality due to the existence of a Framework Agreement and the minimum amount selection modality, the decision must be to make the acquisition through the Framework Agreement. In this way, the State Entity honors the principles of transparency, economy and responsibility in the terms of articles 24, 25 and 26 of Law 80 of 1993.

C. Concurrence of competition based on merits and minimum amount

The modalities of selection based on merit contest and of minimum amount concur when: (a) the budget of the Procurement Process is lower than or equal to the minimum amount of the State Entity; and (b) the purpose of the Procurement Process is the selection of consultants or projects, according to item 3 of article 2 of Law 1150 of 2007.

The principle of economy contained in Law 80 of 1993 seeks that in the selection of the contractor, the State Entity complies with and establishes the procedures and stages that are strictly necessary to ensure the objective selection of the most favorable offer, with austerity in terms of time, means and expenses. In consequence, considering that the minimum amount selection is special for any purpose and that the minimum amount selection allows to obtain a greater economy in the Procurement Process, in the case of concurrence of the competition based on merit contest and of minimum amount, Colombia Compra Eficiente considers that the selection modality applicable is that of minimum amount.

06 Acquisition in Department stores or superstores

Paragraph 1 of article 2 of Law 1150 of 2007, added to by Law 1474 of 2011, established that the State Entities can make acquisitions of minimum amount in a “department store”, which are governed by article 2.2.1.2.1.5.3 of Decree 1082 of 2015.

Colombia Compra Eficiente recommends to consult the option of purchases in department stores at the Colombian State's Online Store at <https://www.colombiacompra.gov.co>.