



Manual for the Call-Off of the Framework Agreements

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 GOBIERNO DE COLOMBIA



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Introduction

The State Entities acquire, in an independent manner, the same Goods and Services of Uniform Technical Characteristics for which they must use time and resources and do not take advantage of the possibility of acting as one single buyer. Colombia Compra Eficiente seeks to change this situation, aggregating the demand of the whole State and coordinating its purchases. The Framework Agreements allow it to be done, because they consolidate the market information and identify opportunities of cooperation between the State Entities. The Framework Agreements offer to the public servants a straightforward process to acquire Goods and Services of Uniform Technical Characteristics.

Law 1150 of 2007 establishes that under the abbreviated selection process to acquire Goods and Services of Uniform Technical Characteristics the State Entities may use procurement instruments by catalog derived from the celebration of Framework Agreements¹.

Colombia Compra Eficiente is the entity in charge of “Designing, organizing and executing the Framework Agreements and other mechanisms for the aggregation of demand”² and in consequence, it is the entity that must carry out the Procurement Processes for the Framework Agreements.

The selection of the suppliers for a Framework Agreement must be made by public tender according to the provisions of item 1 of article 2 of Law 1150 of 2007 and by article 2.2.1.2.1.2.10 of Decree 1082 of 2015. In consequence, all the Framework Agreements signed by Colombia Compra Eficiente are the result of a Procurement Process made under the modality of public tender.

The State Entities of the executive branch of the national level have the obligation to acquire the Goods and Services of Uniform Technical Characteristics that they require by using the Framework Agreement in force. The autonomous entities, those of the legislative and judicial branch and the territorial entities can adhere to the Framework Agreements signed by Colombia Compra Eficiente but do not have the obligation to do so³.

We recommend to those interested in the Framework Agreements to consult, besides this Manual:

(a) the Guide to Buy in the Colombian State’s E-Store; and (b) the Guide to understand the Framework Agreements published at <https://www.colombiacompra.gov.co/tienda-virtual-del-estado-colombiano>.

1. Letter (b) of item 2 of article 2 of Law 1150 of 2007.

2. Item 7 of article 3 of Decree Law 4170 of 2011.

3. Paragraph 5 of article 2 of Law 1150 of 2007.

Definitions

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

Definitions	
Purchaser Entities	Are the entities the subject matter of article 2 of Law 80 of 1993, articles 10, 14 and 24 of Law 1150 of 2007, and those that according to the law must apply Law 80 of 1993 and Law 1150 of 2007 that acquire Goods and Services of Uniform Technical Characteristics through the Framework Agreement and in consequence generate Purchase Orders.
Main Operation	It is the group of studies, activities and negotiations carried out by Colombia Compra Eficiente for the execution of a Framework Agreement and the agreement between Colombia Compra Eficiente and the Suppliers.
Call-off	Are the activities that must be carried out by the Purchaser Entity to purchase, receive and pay the goods or services covered by a Framework Agreement.
Purchase Order	It is the expression of the will of a Purchaser Entity to participate in the Framework Agreement, to be bound by its terms and conditions, and it is the documentary support of the relationship between the Supplier and the Purchaser Entity.
Supplier	It is who entered into a Framework Agreement as a result of a tender process and in consequence is capable of delivering Goods and Services of Uniform Technical Characteristics to the Purchaser Entities pursuant to a Framework Agreement.
Colombian State's E-Store	It is the SECOP application that Colombia Compra Eficiente has made available to the Purchaser Entities and to the Suppliers through which the transactions of the Framework Agreement must be made.
SIIF	It is the Integrated Financial Data System of the Ministry of Finance and Public Credit.



II General Aspects

The Framework Agreement is the contract entered into by and between one or more Suppliers and Colombia Compra Eficiente, for the provision to the State Entities of goods and services of Uniform Technical Characteristics, in the manner, terms and conditions established in it.

The parties of a Framework Agreement are the Suppliers selected within the framework of the public tender and Colombia Compra Eficiente. The Purchaser Entities are parties of the Framework Agreement as from the date in which a Purchase Order is placed pursuant to it.

Colombia Compra Eficiente is in charge of the administration of the Framework Agreements and in consequence, it offers to the Suppliers as well as to the Purchaser Entities the Colombian State's e-Store, that must be used to complete the transactions derived from the Framework Agreement. The particular terms and conditions of a Framework Agreement are defined in the text thereof.

In a Framework Agreement, there is: (i) a Main Operation in which Colombia Compra Eficiente makes the studies to structure the Framework Agreement, it prepares the Process' Documents, selects the Suppliers and celebrates the Framework Agreement; and (b) a Call-off, in which the Purchaser Entity buys, receives and pays the good or service pursuant to the Framework Agreement.

Consult the Framework Agreements in force at: <https://www.colombiacompra.gov.co/tienda-virtual-del-estado-colombiano>.

III Colombian State's E-Store

Colombia Compra Eficiente makes available to the participants of the public procurement processes, the Colombian State's e-Store for the Suppliers and the Purchaser Entities to carry out the transactions of the Call-off.

The Purchaser Entities must revise and know the Guide to purchase in the Colombian State's e-Store published at <https://www.colombiacompra.gov.co/tienda-virtual-del-estado-colombiano>.

IV Administration of the Framework Agreement

Colombia Compra Eficiente is the manager of the Framework Agreements and therefore it must review the performance thereof. Hence, Colombia Compra Eficiente as specified in each Framework Agreement is in charge of: (a) reviewing and updating the Catalog, including the adjustments of technical data sheets and / or prices as the case may be; (b) to periodically review the market prices to ensure that the conditions of the Framework Agreements are competitive; (c) to impose the sanctions as correspond, including the exclusion of Suppliers from the Catalog in a temporary or final manner; (d) to manage the guarantees, including the

notifications to those who issued them; (e) to extend the term of the Framework Agreements; and (f) to handle the petitions, complaints, claims and requests about the performance of the Framework Agreements. The text of each Framework Agreement establishes the rules for the management thereof.

V Purchase Order

The Purchaser Entity is responsible of the Procurement Process that it triggers in the Colombian State's E-Store with the placement of a Purchase Order.

A. Budget Availability

The Purchaser Entity must have the Budget Availability to make a purchase in the Colombian State's e-Store. For such purposes, it must fill, in the Colombian State's e-Store, a form stating the Budget Availability Certificate (CDP) assigned. If the Purchaser Entity is part of the SIIF, the system verifies the CDP registered once the purchase request has been approved. If the verification generates an error, the purchase request is returned to the buyer as a draft with a message generated by the SIIF which states the error generated in the system⁴.

B. Prior Studies and Documents

The Purchaser Entity has the obligation to make Prior Studies and Documents to acquire goods or Services under the Framework Agreements. For such purposes, Colombia Compra Eficiente has included in the Colombian State's E-Store a form in which the Purchaser Entity must make the Prior Studies and Documents⁵.

C. Supplier Selection

The Purchaser Entity must select the Supplier that offers the most favorable conditions for the Purchaser Entity taking into account that the criteria to choose the best offer in this abbreviated selection is the price. In the Prior Studies and Documents the Purchaser Entity must leave evidence of the reasons to consider the conditions of one or another Supplier as the most favorable. The State Entity is responsible for the Selection of the Supplier, which must be made pursuant to the Law and the Framework Agreement.

The Supplier Selection is the sole responsibility of the Purchaser Entity and it is made with the placement of

4. See sections 5 and 6 of the Guide to buy in the Colombian State's E-Store at: <https://www.colombiacompra.gov.co/tienda-virtual-del-estado-colombiano>.

5. See section 5 of the Guide to buy in the Colombian State's E-Store at: <https://www.colombiacompra.gov.co/tienda-virtual-del-estado-colombiano>.

the Purchase Order in favor of one of the Suppliers of the Framework Agreement.

D. Execution of the Purchase Order

The Purchaser Entity must comply with the obligations derived from the Framework Agreement. For such purposes, it must: (a) carry out the tasks established in the Framework Agreement to receive the goods or services. For example, in the case of the fuel Framework Agreement in Bogotá, they must send to the Supplier the list of vehicles and also coordinate with the Supplier the installation of the control systems; (b) designate a supervisor of the Purchase Order, who must make the follow up of the performance with the terms and conditions of the Framework Agreement and in particular of the terms of the Purchase Order, to review and approve the respective invoices and to verify that the Purchaser Entity pays the amount of the invoices approved in the terms established in the Framework Agreement; (c) refrain from issuing new Purchase Orders if it is overdue in the payment of the invoices derived from the Framework Agreement.

The execution of the Purchase Order is the responsibility of the Purchaser Entity and of the Supplier. Therefore, the Purchaser Entity must inform Colombia Compra Eficiente of any circumstance that leads to a default of the Supplier and to the sanctions applicable established in the Framework Agreement. To enforce the guarantees established in the Framework Agreement, the Purchaser Entity must inform Colombia Compra Eficiente in a timely manner of any situation that could lead to the execution of such guarantees. Some Framework Agreements establish the possibility of requesting guarantees for the Purchase Orders.

The Purchase Order is the contract between the Supplier and the Purchaser Entity, and the Framework Agreement is part of it. The Purchaser Entities must issue and place the Purchase Orders in the Colombian State's e-Store, it is the only way to do so.

The amendments, additions or termination of the Purchase Order are the amendment, addition or termination of a contract and the Purchaser Entity must be aware of the legal, economic, disciplinary and fiscal effects of any of them. The Purchaser Entities can amend or make additions to the value and the expiry date of a Purchase Order or agree the early termination. For this purpose, the Purchaser Entity must reach an agreement with the Supplier and notify the amendment, addition or termination to Colombia Compra Eficiente and present the respective support. The amendment, addition or termination is deemed as done only when it is published in the Colombian State's e-Store. Colombia Compra Eficiente has 3 business days as from the date of receipt of the notice by the Purchaser Entity to make the changes.

VI Process' Documents

In the Framework Agreement the Process' Documents for the Purchaser Entity are: (a) the Framework Agreement; (b) the Prior Studies and Documents that it must make in the Colombian State's e-Store; (c) the quote, as the case may be; and (d) the Purchase Order.

The modalities of minimum amount and abbreviated selection concur when: (a) there is a Framework Agreement in force for the good or Service the subject of Procurement Process and the State Entity has the obligation to acquire the goods and services of Uniform Technical Characteristics pursuant to the Framework Agreements⁶ in force; and (b) the budget of the Procurement Process is equivalent to the minimum amount of the Entity.

In this case we are faced with a conflict of rules contained in the same provision, namely article 2 of Law 1150 of 2007, and therefore it is necessary to resort to the general principles established in Law Ley 80 of 1993 to decide which selection modality is applicable. Article 23 of Law 80 of 1993 establishes that the activities in the Procurement Process must be carried out pursuant to the principles of transparency, economy and responsibility.

The law and the constitutional jurisprudence, regarding conflict in the application of provisions of the same level establish that the provision of a special nature prevails over the provision of a general nature⁷.

The acquisition pursuant to a Framework Agreement is the special 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 pursuant to it.

It is important to bear in mind that the Framework Agreement is the result of a public tender, and through it, the State seeks to benefit from economies of scale by acting as one single buyer. The State Entities take part in the Framework Agreements by filling a summarized prior study with the Colombian State's e-Store and placing the Purchase Order to the Supplier who offers the lowest price for the needs of the State Entity.

By virtue of all of the foregoing, Colombia Compra Eficiente considers that the conflict regarding the application of the modality of abbreviated selection due to the existence of a Framework Agreement and the minimum amount selection modality must be settled in favor of the acquisition pursuant to 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.

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

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