# Colombia Compra Eficiente



Guide to Determine and Verify the Bidder's Residual Capacity in the Public Works' Contracting Processes



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## Guide to Determine and Verify the Bidder's Residual Capacity in the Public Works' Contracting Processes

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#### Introduction

Article 72 of law 1682 of 2013 whereby measures and dispositions for the transport infrastructure projects are adopted and extraordinary powers are granted, established:

"Article 72. Residual contracting Capacity for public works' contracts. The Residual contracting Capacity for the execution of public works' contracts will be obtained by subtracting from the Contracting Experience, the balance of the amount of the Contracts being Performed.

The Contracting Experience must be calculated through the evaluation of the following factors: Experience (E), Financial capacity (CF), Technical capacity (CT), and Organization Capacity (CO).

For the purposes of the evaluation of the factors mentioned in the preceding paragraph, under any circumstance or for any reason will it be possible to take into account the returns and the profits.

The National Government will regulate the matter within sixty (60) days after the enactment of this law, relying on the technical opinion of the Colombian Engineers' Society by virtue of Law 49 of 1904, to see to an equitable regulation of the implementation of minimums and maximums that ensure the rights of the small contractors."

Colombia Compra Eficiente must define a methodology to figure out the bidder's Residual Capacity taking into account the factors set forth in law 1682 of 2013, and the same will not be considered equal or similar to the enabling requirements established in article 10 of Decree 1510 of 2013.

In consequence, Colombia Compra Eficiente makes this guide available to the participants of the public purchasing and procurement system.

#### **Definitions**

The capitalized expressions utilized in this document must be construed with the meaning set forth in Decree 1510 of 2013. The terms defined are utilized in singular and in plural as required by the context in which they are utilized. The terms that have not been defined below must be construed according to their natural and obvious meaning.

The dates for the calculations the subject matter of this guide must be expressed in months and years.

Definitions			
Contracts being Perform	Are the contracts that on the date of presentation of the offer bound the bidder with State Entities and with private entities to execute civil works, including the execution of civil works in the concession contracts of and the work contracts entered into with concessionaries, including the suspended contracts and those that do not have start minutes. The contracts being wound up will not be construed as Contracts being Performed.		
It is the extension of time of 12 months or less of the term of execution of a Period			
T CHOO	contract.		
BALANCES of the Contracts Is the addition of the amounts to be executed of the Contracts being			
Performed during the	Performed during the Execution or SCE 12 following months.		

#### What is the Residual contracting Capacity?

The Residual Capacity is the ability of a contractor to comply, in a full and timely manner, with the purpose of a work contract, without having his other contractual commitments affecting its capacity to fulfill the contract the subject of the Contracting Process. In the Process' Documents of a public works' contract, the State Entity must establish a requirement additional to the enabling requirements namely the Residual Capacity or Contracting K, which must be complied with by those interested in taking part in a Contracting Process for the execution of a public work.

#### **2** How to establish the Contracting Process' Residual Capacity?

The calculation of the Contracting Process' Residual Capacity is equivalent to the estimated official budget of the Contracting Process less the prepayment or down payment as the case may be, if the estimated term of the contract is of less than (12) months.

Residual Capacity of Contracting Process	Estimated Offic.	Down payment or prepayment
---	------------------	-------------------------------

If the estimated term of the contract is higher than twelve (12) months, the Contracting Process' Residual Capacity is equivalent to the linear proportion of 12 months of the estimated official budget less the down payment or prepayment as the case may be.



Colombia Compra Eficiente makes available to the participants of the procurement system an Excel application called "Residual Capacity" which allows the State Entity to calculate the Residual Capacity and to validate that the offerors comply with the Contracting Process' Residual Capacity. The application can be downloaded in the website of Colombia Compra Eficiente, **www.colombiacompra.gov.co**.

# How to know if the bidder meets theResidual Capacity of the Contracting Process?

The bidder must accredit a Residual Capacity equal to or higher than the Residual Capacity established in the Process' Documents for the Contracting Process. Therefore, the bidder's Residual Capacity is enough if:

Bidder's Residual Capacity > Contracting process' Residual Capacity

#### 4 How to calculate the Residual Capacity del bidder?

The bidder must prove that its operation or commercial activity allows him to assume new obligations derived from the contract the subject of the Contracting Process. Therefore, the bidder in a public works' Contracting Process must present the following information to accredit its Residual Capacity:

The list of the Contracts being Performed, as well as the amount and term of such contracts.

The list of the Contracts being Performed, signed by companies, consortia or joint ventures, in which the bidder has a share, as well as the value and term of such contracts.

The audited statement of results that contains the best operational revenues of the last five (5) years and the audited balance sheet of the last year, signed by the interested party or its legal representative and the statutory auditor if it has the obligation to have one, or the auditor or accountant if it does not have the obligation to have a statutory auditor. In the case of bidders obligated to have RUP, the State Entities must request as additional document the statement of results that contains the best operational revenues of the last five (5) years, as the liquidity information can be found in the RUP.

The calculation of the Contracting Process' Residual Capacity must include the factors of Experience (E), Financial capacity (CF), Technical capacity (CT), Organization Capacity (CO) and the Balances of the Contracts being Performed, as per the following formula:

Capacidad Residual = CO 
$$\times \left(\frac{(E+CT+CF)}{100}\right)$$
 - SCE

A maximum score is allocated to each one of the factors:

Factor	Maximum score
Experience (E)	120
Financial capacity (CF)	40
Technical capacity (CT)	40
Total	200

The Organization Capacity does not have allocation of score in the formula because its measurement unit is in Colombian pesos and constitutes a multiplying factor of the other factors, as stated in the following section.

#### A. How to calculate the Organization Capacity (CO)?

The Organization Capacity (CO) corresponds to the operational revenues, taking the foregoing into account:

Years of financial information	Organization Capacity (CO)
Five (5) years or more	Higher operational revenues of the last five years
Between one (1) and five (5)	Mayor operational revenues of the bidder's life years
Less than (1) year	USD 125.000 <sup>1</sup>

If the bidder's operational revenues with one (1) or more years of financial information is lower than USD 125.000, the Organization Capacity (CO) del bidder is equal to USD 125.000. To verify the Organization Capacity of the bidder the State Entity must request the statement of results that contains the best operational revenues of the last five (5) years duly audited and approved by the public accountant or statutory auditor as corresponds and entered into by the legal representative.

<sup>1.</sup> Calculated using the exchange rate determined by the Ministry of Trade, Industry and Tourism every 2 years for the purposes of the Mipyme (SME) benefit threshold.

In the Contracting Processes in which the offer must be filed before the 5<sup>th</sup> business day of the month of April, the financial data must be the data audited and approved by the highest corporate body that the bidder intends to accredit.

#### B. How to calculate the Experience (E)?

The bidder's experience (E) for the purposes of the Residual Capacity is accredited through the ratio between: (i) the total amount in pesos of the contracts related to the construction activity registered by the bidder in the RUP in segment 72 "Building, Construction of Facilities and Maintenance Services" of the Classification of goods and services; and (ii) the official budget of Contracting Process.

The ratio indicates the number of times that the bidder has carried out contracts equivalent to the amount of the Contracting Process the subject of the accreditation of the Residual Capacity. The foregoing is described in the formula below.

#### 

The calculation of the experience (E) factor for the purposes of the Residual Capacity of a member of a plural bidder must consider its participation in the Contracting Process the subject of calculation of the Residual Capacity. If the bidder is not plural, no percentage applies<sup>2</sup>.

To accredit the experience (E) factor, the bidder must fill the form that corresponds to Annex 1, which contains the contracts registered in segment 72 and their total value in Colombian pesos liquidated using the minimum legal monthly wages in force (SMMLV).

The legal entities with existence of less than three (3) years, can accredit the experience of their shareholders, members or founders.

Higher Lower than or Score than equal to 0 3 60 3 6 80 6 10 100 10 Higher 120

The score allotted to the experience (E) factor must be assigned based on the following table:

7

<sup>2.</sup> The plural bidder's residual capacity is the addition of Residual capacity of each one of the members.

#### C. How to calculate the Financial capacity (CF)?

The financial capacity (CF) is obtained taking into account the bidder's liquidity ratio based on the following formula:



The liquidity score must be assigned based on the following table:

Higher than or equal to	Lower than	Score
0	0,5	20
0,5	0,75	25
0,75	1,00	30
1,00	1,5	35
1,5	Higher	40

The bidder's liquidity ratio is verified with the RUP. If the bidder does not have enough age to have audited financial statements as of the 31<sup>st</sup> of December of the preceding year, the quarterly or initial financial statements must be taken into account, duly signed by the legal representative and the auditor that were registered with the RUP<sup>3</sup>.

#### D. How to calculate the Technical capacity (CT)?

The technical capacity (CT) is assigned taking into account the number of members and of architecture, engineering and geology professionals hired under an employment or services agreement according to which they carry out activities directly related to the construction.

To accredit the technical capacity (CT) the bidder must fill the relevant Form in Annex 2. The score of the technical capacity (CT) is assigned based on the following table:

From	То	Score
1	5	20
6	10	30
11	Higher	40

3. Article 9 of Decree 1510 of 2013.

#### E. How to present the list of the Contracts being Performed?

The bidder must submit a certificate signed by its legal representative and its statutory auditor, if the bidder has the obligation to have one, or otherwise by the accountant or independent auditor, that must contain the list of the Contracts being Performed, both at a national and an international level, stating: (i) the amount of the contract; (ii) the term of the contract in months; (iii) the start date of the works the subject of the contract, day, month, year; (iv) if the work is done by a consortium, joint venture or special purpose vehicle, together with the share percentage of the bidder submitting the certificate; (v) if the contract is suspended and, if such is the case, the date of suspension. If the bidder does not have Contracts being Performed, the certificate must expressly state such circumstance.

Contract 1 Data	
Term	16 months
Value	\$ 1.000.000.000
Start Date	12 December 2013
Share percentage	80% the bidder
Date of presentation of the offer the subject of the Procurement Process	1 February 2014
Days performed	51 days
Days to be performed as of 1 February 2014	429 days
Is it suspended?	No

The calculation of the Balance of the Contracts being Performed must be made in a linear manner when a daily execution equivalent to the amount of the contract divided by the term thereof, expressed in days. This result is multiplied by the number of days pending to comply with the term of the contract and if the contract is performed by a plural structure by the participation of the bidder in the respective contractor. If the number of days to be executed in a contract is higher than 12 months, namely 360 days, the Balance of the Contract being Performed will only consider the linear proportion of 12 months.

In the case of the example the calculation is as follows:

If a contract is suspended, the calculation of the Balance of the Contract being Performed of said contract must be figured out assuming that the part yet to be executed shall start to be performed on the date of the presentation of the offer of the Contracting Process.

Decree 791 of 2014 refers to the contracts to execute civil works, entered into with either State Entities, private entities, including the contracts to execute civil works pursuant concession contracts. The foregoing because the contractor's experience to carry out new works is affected by both the public and private contracts. Likewise, it refers to the contracts entered into by the bidder such as those entered into by consortia, joint ventures or special purpose vehicles in which the bidder takes part.

#### 5 Foreign bidders with no branch office in Colombia

The foreign bidders with no branch office in Colombia must accredit the weighing factors for the calculation of the Residual Capacity as follows:

- (a) Organization and Financial Capacity: they must submit their financial statement in the currency of the country in which the same were issued and also in Colombian pesos. The bidder and the State Entity, for the purposes of accrediting and verifying the requirements will take into account the representative market rate in force on the date in which the financial statements were issued. For such purpose, the bidder and the State Entity shall take into account the exchange rates certified by the Financial Superintendence.
- (b) Experience: they must submit the form that is part of this Guide as annex, duly signed by the bidder's legal representative and statutory auditor or accountant of the bidder. The bidder must submit a copy of the contracts signed or certifications of third parties that received the services for the construction of civil works with third parties, either public or private.

The foreign bidders that according to the applicable provisions approve their audited financial statements with cutoff date on the 31st of December on a date that is after the fifth business day of the month of April, can submit their financial statements as of the 31<sup>st</sup> of December, signed by the legal representative together with an audit pre-report in which the auditor or the statutory auditor certify that: (a) the financial information filed with the State Entity is the one submitted to the auditor or statutory auditor to comply with their audit duties; and (b) the bidder, in a regular manner and for prior fiscal periods, has adopted generally accepted accounting standards and principles to prepare his data and financial statements. This provision is also applicable to the information that the bidder has to submit, in these conditions, to register with the RUP according to article 9 of Decree 1510 of 2013.

### 6 How to calculate the Contracting Experience of a plural bidder?

The Residual Capacity of a plural bidder must be the addition of the Residual Capacity of each one of its members.

## 7 Example

Consortium AB takes part in a Contracting Process the estimated budget of which is of \$2.300.000.000, 10% down payment, date for the submission of the offer is the 5<sup>th</sup> of February of 2014 and the term of the contract is of 9 months. Below the information of Company A and of Company B.

Company A Data	
Information	Figures
Consortium Share	80%
Best operational revenues of the last 5 years	\$ 11.000.000.000
Liquidity	1,5
Experience recorded in RUP	\$ 70.000.000.000
Professional Personal enrolled	18 persons

Experience Calculation	70.000.000.000 38,04 times
	$-\frac{1}{(2.300.000.000\times80\%)} = 30,04 \text{ times}$

Company A Score	
Factors	Score
Organization Capacity (CO)	\$ 11.000.000.000
Financial capacity (CF)	40
Experience (E)	120
Technical capacity (CT)	40

Contracts being performed Company A		
Term	12 months, 360 days	
Valor	\$ 2.300.000.000	
Start Date	10 November 2013	
Executor	70% the bidder	
Days executed	87	
Days to be executed as of the 5 <sup>th</sup> of February 2014	273	

Residual Capacity A -11.000.000.000 $\times \left(\frac{(120+40+40)}{100}\right)$ - SCE
Daily Balance of the Contract being Performed $\$ 2.300.000.000$ $( 30 \times 12 )$ $\blacksquare$ \$ 6.388.888
Saldo del Contract being Perform <del>ed</del> \$ 6.388.888 273 days 7 <del>0%</del> \$ 1.220.916.666
— — — — — — — ,

Company B Data	
Information	Figures
Consortium Share	20%
Best operational revenues of the last 5 years	\$ 1.100.000.000
Liquidity	3,5
Experience recorded in RUP	\$ 9.000.000.000
Professional Personal enrolled	6 personas

Experience Calculation	<u> </u>
	-1000000000000000000000000000000000000

I		II
с		

Cor	npany B Score
Factors	Score
Organization Capacity (CO)	\$ 1.100.000.000
Financial capacity (CF)	40
Experience (E)	120
Technical capacity (CT)	30



The Residual Capacity of the AB Consortium is as follows:

Residual Capacity AB - \$ 20.779.083.333 + \$ 2.090.000.000 - \$22.869.083.333

Lastly, the result must be higher to and equal to \$2.300.000.000 less \$230.000.000 for the bidder to comply with the Contracting Process' Residual Capacity.

# 8 How to utilize the "Residual Capacity" application to figure out the Bidder's Residual Capacity?

Colombia Compra Eficiente makes available to the participants of the public procurement system the Excel application called "Residual Capacity" to: (a) help the State Entities to establish the Residual Capacity in the Contracting Processes of public works; (b) to offer the bidders a tool to verify whether or not they have the Residual Capacity demanded in the Contracting Processes in which they have interest and to accredit it in such processes; and (c) to offer to the State Entities a tool to verify the information submitted by the bidders to accredit the Residual Capacity.

This application can be unloaded from http://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias

At the "Home" the application has the main menu from which the forms related to the information of the Contracting Process and of bidder are displayed:

álculo de la Capacidad Residual		Colombia Compra Eficier	
Proceso de Contratación Información general	Ingresar	INCOMPLETO	
Proponente		80	
Información del Proponente	Ingresar	INCOMPLETO	
Información de Contratos en Ejecución	Ingresar	INCOMPLETO	

#### **Contracting Process**

*General Information:* The State Entity must enter the following information of the Contracting Process: (a) estimated value of the contract, (b) percentage of down payment or prepayment and (c) the date of presentation of the offer and (d) estimated term of the contract:

Información del Proceso de Contratación		
Presupuesto estimado del Proceso de Contratación (\$COP)	\$ 2,300,000,000	Colombia Compra El
Fecha de presentación la oferta (dd-mm-aaaa)	2/5/2014	Guardar
Porcentaje de anticipo o pago anticipado (%)	10%	Información
Plazo estimado del Proceso de Contratación (meses)	9	

The State Entity must hit the "Save Data" button to save the data of the Contracting Process.

#### **Bidder**

*Bidder's Information:* This button presents a form that specifies: the name of the bidder and indication of whether or not the bidder is a plural bidder.

Nombre del Proponente			
Tipo de Sociedad			-1
Es un oferente plural?			
⊂ si ⊂ No			
C No			
	Aceptar	Cancelar	1

If the bidder is a plural bidder, the State Entity must state the number of members that make up the plural bidder:

formación Proponente	
Nombre del Proponente AB	Oferente Plural
Tipo de Sociedad Es un oferente plural? G Si C No	Oferente Plural Cuantos integrantes participan en la sociedad? 2
Aceptar Cancelar	Aceptar

Afterwards, the State Entity must state the name and the participation of each one of the members of the plural bidder:

Número de integrantes del propo	onente plural 2	Colombia Compra Eficiente
Por favor escriba el nombre de las	empresas y participaciones que componen el propo	nente plural: Guardar
		Información
Nombre de Empresa	Participación	

The State Entity must select using the character X the type of financial information that the bidder(s) have in the event that it is a plural bidder. The bidders may have (a) more than one (1) year of financial data or less than one (1) year of financial data:

Información financiera del proponen	te	-		
Por favor seleccione con una <b>X</b> el tipo	de información financiera q	ue tiene el proponente e	o participantes del proponente plural:	Colombia Compra Eficiente
Nombre de Empresa	Más de 1 año de Información Financiera	Menos de 1 año de Información Financiera		Guardar Información
A B	x x			

If the bidder has one (1) or more years of financial information, the bidder must enter the best operational revenues of the last five (5) years. If the bidder has less than (1) year of financial data, the application will automatically assign to it operational revenues of USD 125.000. In case that the bidder has financial information of year (1) or more years and has operational revenues of less than a USD 125.000, the application will also assign to the bidder this same amount in operational revenues:

resos operacionales del proponente			Celembia Cempra Éficie
for favor ingrese el mejor ingreso opera	inferiores a USDS Guardar		
25.000 o COP\$ 228.842.000, la Capaci	idad Organizacional es de	COP\$ 228.842.000:	Información
25.000 o COP\$ 228.842.000, la Capaci Periodo de Información Financiera Proponente	Idad Organizacional es de Mejor de los 5 años A	e COP\$ 228.842.000: Mejor de los 5 años B	

In addition, the State Entity must input the (a) liquidity; (b) number of professionals; (c) the total contracted amount of the bidder; and (d) the equity.

nformación del Proponente				Colombia Compra Efe
or favor ingrese la información para o	Capacidad financiera	Capacidad técnica	Experiencia (Valor total contratado	Guardar Información
Nombre de Empresa	(Liquidez)	(# de profesionales)		
0.00			en SCOP)	
	15 35	18	5 70,000,000 5 9,000,000	

Information of Contracts being Performed: This button displays a form in which they must enter the number of Contracts being Performed that the bidder has as of the date of presentation of the offer. If the bidder is plural it must indicate the number of Contracts being Performed of each one of the members of the plural bidder. If the bidder does not have Contracts being Performed they must write zero (0):

ormación de contratos del Propo Ingrese el número de contratos vige	· · · · · ·	tratos, por Colombia Compra Eficient
favor escriba cero (0):		Guardar
		Información
Nombre de Empresa	Contratos	Información
Nombre de Empresa A	Contratos	Información

Afterwards, the State Entity must record the information of each one of the contracts recorded in the preceding form:

In	Información de Contratos Vigentes del Proponente Por favor ingresar la información de los contratos vigentes. Si el contrato no se encuentra suspendido, n				- Colombia Corport Difference Colombia Colom			Guardar		
	Contratos vigentes por Empresa	Γ	Valor (COP)	Fecha inicio (dd-mm-aaaa)	Plazo (meses)	Offerente Plural (Si, No)	Participación (%)	Esta suspendido? (Si, No)	Fecha suspensión (dd-mm-aaaa)	Información
	a - Contrato No. 1	\$	1,000,000	12/12/2015	10	si	70%	No		

This information comprises:

- Value: Value of the contract in Colombian pesos. If there are decimals, divide with comma (,).
- Start Date: day, month and year of the start of the contract (dd-mm-yyyy).
- Term: Term of the contract in months.
- Plural bidder: If the contract in force is performed by a consortium, joint venture or special purpose vehicle, it must mark "Yes". If the contract is performed by the bidder only it must mark "No".
- Participation: Percentage of participation in each one of the Contracts being Performed. If the bidder is not plural, the participation will be of 100%.
- Is it suspended?: If the contract is suspended, the user must write "yes". Otherwise, it must write the word "No".

Suspension Date: If the contract is suspended, the user must enter the suspension date (dd-mm-yyyy). Otherwise, the box must be left blank. Once these form have been filled, the home menu shall look like this:

álculo de la Capacidad Residual		Colombia Compra Eficier		
Proceso de Contratación Información general	Ingresar	COMPLETO		
Proponente Información del Proponente Información de Contratos en Ejecución	Ingresar Ingresar	COMPLETO		
Cálculo de la Capacidad Residual		Calcular		
¿Desea borrar e iniciar nuevamente el cálculo?		Borrar		

The button of "Calculate" will make all the calculations established in the methodology described in this manual and it will create a report in which it will define whether the bidder meets the Residual Capacity Required for this Contracting Process:

Reporte - Cálculo de la Capacidad Residual					Colombia Compra Eficiente
Cálculo de la Capacidad Residual del Proponente					
Proponente		A		В	
Capacidad organizacional	S	11,000,000,000	\$	1,100,000,000	
Capacidad técnica		40		30	
Capacidad financiera		40		40	
Experiencia		120		120	
Saldo de Contratos en Ejecución	S	702,138,889			
Cálculo	S	21,297,861,111	S	2,090,000,000	
Capacidad Residual del Proponente	\$	23,387,861,111			
Cálculo de la Capacidad Residual del Proceso de Contratación					
Presupuesto estimado del Proceso de Contratación	s	2,300,000,000			
Capacidad Residual del Proceso de Contratación	s	2,070,000,000			
Cumplimiento de la Capacidad Residual					
El Proponente cumple la Capacidad Residual?		SI CUMPLE			

In addition, the button of "Create PDF" creates the report and exports it to a PDF file:

Reporte - Cálculo de la Capacidad Residual				Colombia Compra Eficiente
Cálculo de la Capacidad Residual del Proponente				
Proponente		A		
Capacidad organizacional Capacidad técnica Capacidad financiera Experiencia Saldo de Contratos en Ejecución	s s	11,000,000,000 40 40 120 702,138,889	\$ 1,100,000,000 30 40 120	
Cálculo	\$	21,297,861,111	\$ 2,090,000,000	
Capacidad Residual del Proponente	\$	23,387,861,111		
Cálculo de la Capacidad Residual del Proceso de Contratación				
Presupuesto estimado del Proceso de Contratación	5	2,300,000,000		
Capacidad Residual del Proceso de Contratación	\$	2,070,000,000		
Cumplimiento de la Capacidad Residual				
El Proponente cumple la Capacidad Residual?		SI CUMPLE		

#### Annex 1 - Certification of contratos for accreditation of experience

#### Bidder

Contracts related to the activity of construction – segment 72 Classifier UNSPSC	Participation bidder en the cor plural	ntractor Total value of the contracts performed (amount del weighed contract times the participation in Colombian pesos)
		Total

In witness whereof I sign this document on the day [day] of the month of [month] of [year].

Signature of the legal representative of the Bidder
Name:
Position:
ID Card:

The representatives of the members of the Plural bidder must each one sign this document.

#### Annex 2 - Certification of the Technical Capac.

#### Bidder

Name of the member and/or professional of the architecture, engineering or geology	Profession	N° of professional ID	Number and year of the Employment or Professional services contract	Term of the Contract

In witness whereof I sign this document on the day [day] of the month of [month] of [year].

Signature of the legal representative of the Bidder	Signature of the representative of the auditor or statutory auditor			
Name:	Name:			
Position:	Position:			
I. D. Card:	I. D. Card:			

The representatives of the members of the Plural bidder must each one sign this document.