



Colombia Compra Eficiente



Manual to determine and verify
the enabling requirements in the
Procurement Processes

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GOBIERNO DE COLOMBIA



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Introduction

The functions of Colombia Compra Eficiente, include the drafting and divulgation of instruments and tools that facilitate the public purchases and procurement and the promotion of best practices, efficiency, transparency and competitiveness.

Pursuant to this function, it has written this Manual to determine and verify the enabling requirements in the Procurement Processes, to support the participants in the Public Procurement System.

The capitalized expressions utilized in this document must be construed according to 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 must be construed according to their natural and obvious meaning.

| General Aspects

A. What are and what is the purpose of the enabling requirements in the Procurement Process?

The enabling requirements measure the bidder's ability to take part in a Procurement Process as offeror and refer to its legal, financial, and organizational capacity, as well as to its experience¹.

The purpose of the enabling requirements is to establish some minimum conditions for the offerors so the State Entity takes into consideration only the offers of those that are capable of complying with the purpose of the Procurement Process.

The bidder is the one who has to submit the documents to accredit the enabling requirements in a Procurement Process. The enabling requirements always refer to the conditions of a bidder and never of the offer.

The State Entity must verify whether or not the offerors meet the enabling requirements. The compliance with the enabling requirements in a Procurement Process grants no score whatsoever, excepting in the case of the consultants' experience².


If the Procurement Process requires the offerors to have RUP³, the State Entity must demand in the Process' Documents, as a minimum, the indicators established in this record⁴. However, it can request additional indicators, in which case it must directly verify them using additional documents (see section I.C. of this Manual).

1. Item 1 of article 5 of Law 1150 of 2007.

2. Second part of article 6 of Law 1150 of 2007.

3. Item 4 of article 5 of Law 1150 of 2007. Artículo 10 del Decreto 1510 de 2013.

4. Article 2.2.1.1.1.5.3 of Decree 1082 of 2015.



If in the Procurement Process it is not mandatory for the offerors to have RUP, the State Entity, in an autonomous manner, must define the manner in which the enabling requirements of experience, legal capacity, financial capacity and organizational capacity must be accredited. In this case, the State Entity must establish in the Process' Documents the enabling requirements demanded and the manner of accrediting and verifying them (see section I.C. of this Manual).

The law does not require the establishment of enabling requirements in the direct awarding modality because the State Entity directly chooses the individual or legal entity that must perform the purpose of the Procurement Process. The foregoing without prejudice to the State Entity's duty to review the suitability of the contractor and to verify its legal capacity to be bound and to comply with the purpose of the contract.

The minimum amount selection modality has special conditions to verify the enabling requirements, which are specified in the minimum amount selection modality, available at <https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias>.


B. How to establish the enabling requirements?

The State Entities must establish the enabling requirements in a manner adequate and proportional to the nature and value of the contract⁵. It is very important to understand the scope of the adequate and proportional expression that seeks a relationship between the contract and the experience of the bidder and its legal, financial and organizational capacity. In other words, the enabling requirements demanded must be proportional to the purpose of the contract, its value, complexity, term, terms of payment and the Risk associated to the Procurement Process.

In the Procurement Processes that are not complex it is possible to establish low – demand enabling requirements. For example, if the Procurement Process is for the construction of plate footprint, it is possible that the State Entity does not require experience other than the civil engineering degree. On the contrary, if the Procurement Process is for the construction of a viaduct, the State Entity must demand experience in the construction of equal or similar structures of a lower length but proportional to the one of the object of the Procurement Process.

The State Entity must establish the enabling requirements of the Procurement Process once it has carried out analyses to know the sector related to the purpose of the Procurement Process (see the Guide to Make Sector Studies in <http://www.colombiacompra.gov.co/manuales>), which includes the material knowledge of the possible offerors from a commercial viewpoint and the risk analysis (see the Manual for the identification and hedging of Risk in the Procurement Processes in <https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias>). This analysis allows to know the particular issues of each economic sector, such as the corporate size of the possible offerors, their business model and whether or it

5. Item 1 of article 5 of Law 1150 of 2007.



is possible to have plural bidders. These particular issues must be taken into account to prevent directing the enabling requirements towards a type of bidder.

The promotion of the competition is one of the objectives of the Public Procurement System, and therefore it is very important to take into account that the enabling requirements are not and cannot be a way to restrict the participation in the Procurement Processes. The Public Procurement System must promote the participation of more bidders and the growth of the national industry of goods and services and therefore the enabling requirements must be adequate and proportional.

To determine if the enabling requirements are adequate and proportional, Colombia Compra Eficiente recommends that the State Entity answers the following questions during the writing of the Process' Documents:

- Is the experience required appropriate, considering the value and the complexity of the contract?
- Is the financial capacity required for the Procurement Process is in agreement with the financial conditions of the goods and services' market to which the Procurement Process refers?
- Do the enabling requirements allow the participation of most of the market actors that offer the goods and services the subject matter of the Procurement Process?
- Do those who comply with the enabling requirements have the possibility to comply with the purpose of the contract within the schedule and budget set forth in the Procurement Process?


C. Accreditation of the enabling requirements

The Single Bidders' Registry (RUP) is the instrument through which the bidders accredit their legal, financial, and organizational capacity as well as their experience. The RUP certificate is the evidence of such conditions, and therefore the State Entities cannot request additional documentation from the offerors to verify the information contained in it.

The RUP is not mandatory in some Procurement Processes, such as the direct awarding, the minimum amount, the provision of health services, the disposal of the state's assets, the acquisition of products of agricultural and cattle origin or destination offered in commodity exchanges, the concession contracts and the contracts entered into by the industrial and commercial enterprises of the State and the companies partially owned by the State the purpose of which is to carry out industrial and commercial activities⁶. The fact that the RUP may not be demanded does not mean that the State Entity does not establish enabling requirements (see section I. A above).

The foreign individuals or legal entities with no domicile or branch office in Colombia do not have the obligation to be included in the RUP, and therefore the State Entities must verify in a direct manner the compliance

6. Article 6 of law 1150 of 2007.



with the enabling requirements, for these purposes, Colombia Compra Eficiente suggests to include in the bid conditions models of certificates with which the bidders may accredit the enabling requirements (see section VIII of this Manual).

The State Entities may demand indicators of financial capacity and organizational capacity additional to those included in the RUP provided that those additional requirements are appropriate regarding the Risks, the sector studies, the amount and the purpose of the Procurement Process. In that case, the State Entity must request the documentation to verify, in a direct manner, the compliance with the requirements.

D. Curing of enabling requirements

The State Entities may ask the offerors to cure the errors or inconsistencies in the documents submitted to accredit the enabling requirements. The offerors can cure the errors or inconsistencies up to the moment of awarding, excepting in: (i) the selection processes by auction in which the offerors must have accredited the enabling requirements before the start of the survey; and (ii) the competition based on merits with prequalification in which it is possible to cure the errors or inconsistencies of the enabling requirements up to the date of formation of the prequalified persons' list.

The State Entity must evaluate the offers of the bidders who accredited the enabling requirements. In consequence, the State Entity must reject the offers of those who do not clarify, complete or correct the information to accredit the enabling requirements prior to the awarding, or of the auction or formation of the shortlist, as the case may be. The State Entities cannot state in the bidding terms the documents or the type of information that can be cured.

II

Experience

The experience is the bidder's knowledge derived from its prior participation in activities equal or similar to those set forth in the purpose of the contract.

The bidders must record with the RUP the contracts entered into by them to provide the goods and services that they intend to offer to the State Entities, identifying the goods, works and services with the Classification of Goods and Services in the third level and to express the amount of the respective contract in Minimum Legal Monthly Wages in force ("SMMLV"). The record must contain the experience acquired in a direct manner or through the participation in plural bidders. This experience is obtained with public or private, national or foreign, contracting entities. There is no limit regarding the number of contracts or the date in which the same were entered into.

When the bidder cannot obtain the certificate or when it wants to certify the experience derived from contracts entered into with individuals or legal entities that no longer exist, it can file with the Chamber of Commerce a copy of the respective contract⁷.

7. Section (b) of item 1 and section (e) of item 2 of article 2,2,1,1,1,5,2 of Decree 1082 of 2013.



The experience required in a Procurement Process must be adequate and proportional to the nature of the contract and its value. The experience is adequate when it is related to the type of activities set forth in the object del contract to be entered into. For example, if the Procurement Process is for the general housekeeping service, the bidder must have experience in the housekeeping service, and the place in which it has provided the service or the name of the contracting party shall not be relevant.

The experience is proportional when it is related to the scope, the amount and complexity of the contract to be entered into. For example, in a public – works Procurement Process with an official budget of 100 SMMLV, the experience required is proportional if the State Entity requires that the bidders have taken part in Procurement Processes of 50 SMMLV of the same type of work.

The experience does not expire with the lapse of time and, quite the contrary, the bidders acquire a greater experience with the lapse of time, provided that they continue with their activities.

The experience of the plural bidder (joint venture, consortium and promise of a future company) corresponds to the addition of the experience accredited by each one of the members of the plural bidder.

On the other hand, when a bidder acquires experience in a contract as a member of a plural contractor, the experience derived from that contract corresponds to the weighing of the amount of the contract by the percentage of participation.

III Legal capacity

The legal capacity is the capacity of a person to enter into contracts with a State Entity, namely (i) to commit to comply with the purpose of the contract; and (ii) not to have incurred in causes of disqualification or incompatibilities that prevent the execution of the contract.


A. Individual

The individuals older than eighteen (18) are legally capable unless expressly disqualified by a judicial or administrative decision, such as interdiction by court order, and that have not fallen in the legally established causes for disqualification, incompatibilities or prohibitions to enter into contracts.

B. Legal Entity

The legal capacity of the legal entities is related to: (i) the possibility to carry out activities within the framework of their corporate purpose; (ii) the powers of its legal representative and the authorization of the competent corporate body whenever necessary according to the corporate by - laws; and (iii) the absence of legally established causes for disqualification, incompatibilities or prohibitions to enter into contracts.

The corporate purpose of the legal entities members of a plural bidder must allow them to carry out the



activities of the Procurement Process, either because it is a part of its main corporate purpose or because it is an activity ancillary to it. The legal representatives of the legal entities that are members of the plural bidder must have full powers to bound the legal entity for the compliance with the entire purpose of the contract, as they have joint and several liability regarding the State Entity.

It is important to point out that there are regulated activities that also require the authorization of the competent authority, as it is the case of the provision of security services, which require the authorization of the Superintendence of Surveillance and Private Security, or the sale of fuels, which require the permits and authorizations established by the Ministry of Mines and Energy.

C. Disqualifications and incompatibilities

The disqualifications and incompatibilities are established to assure the public interest and to protect the transparency, objectivity and impartiality in the relationships between the State and the private parties.

The disqualifications and incompatibilities' regime is of restrictive application, and therefore when there are several possible interpretations about a disqualification or incompatibility, the one that shall be preferred is the one that less limits the rights of the persons.

All the State Entities, whether or not subject to law 80 of 1993 and to law 1150 of 2007, have the obligation to respect the disqualifications and incompatibilities' regime to contract with the State.

The disqualifications are a limitation of the capacity to enter into contracts with State Entities and are expressly set forth in the law, which establishes that the persons that have fallen in the following situations are not able to take part in Procurement Processes⁸:

- (a) The persons that are disqualified to enter into contracts by the Constitution and the laws.
- (b) Those who took part in tender processes or entered into the contracts subject matter of the preceding item while disqualified. This disqualification will be in force for the term of 5 years as from the date of participation in the tender process.
- (c) Those who led to the declaration of forfeiture. This disqualification will be in force for a term of 5 years as from the date of the act of declaration of the forfeiture.
- (d) Those convicted by the courts to the accessory conviction of interdiction of rights and public functions and those that been disciplinarily removed from the position. This disqualification will last for a term of 5 years as from the date of firmness of the relevant ruling.
- (e) Those who, without cause, refrain from entering into the state contract awarded. This disqualification will last for 5 years as from the date in which the term to sign expired.
- (f) The public servants.

8. Article 8 of Law 80 of 1993. Special provisions such as articles 3, 5 and 90 of Law 1474 of 2011 and the Sole Disciplinary Code contemplate other causes of disqualification.

- (g) The spouses or partners⁹ and those within the second degree of consanguinity or second of affinity with any other person that has formally filed an offer for the same tender or competitive process.
- (h) The companies other than open corporations in which the legal representative or any of the members is related, within the second degree of consanguinity or second of affinity, to the legal representative or to any of the partners of a company that has formally filed an offer for the same tender or competitive process.
- (i) The members of partnerships the forfeiture of which has been declared, as well as the partnerships of which the latter are members after said declaration. This disqualification will last for 5 years as from the date of declaration of the act of forfeiture.
- (j) The individuals that were judicially liable for the commission of crimes against the Public Administration punished with imprisonment, or trans – national bribery, with the exception of negligent offences. This disqualification will extend to the companies of which those persons are members, their parent and subordinate companies, with the exception of open corporations and it lasts for a term of 20 years.
- (k) The personas who funded political campaigns for the Presidency of the Republic and for the offices of governor or mayor, with contributions of more than 2,5% of the maximum amounts to be invested by the candidates in the election campaigns in each electoral district, in respect of the State Entities, including the decentralized entities of the respective administrative level, for which the candidate was elected and in respect of the contracts other than the professional services' contracts. This disqualification is for the period for which the candidate was chosen and it also operates for the persons within the second degree of consanguinity or second of affinity, or first civil degree with the person who funded the political campaign. This disqualification also comprises the companies already existing or that may exist in future other than corporations, in which the legal representative or any of its partners have funded, directly or through a third party, political campaigns for the Presidency of the Republic and for the offices of governor or mayor.
- (l) Those who were public servants in positions of the directive level and the companies of which they are members for a term of 2 years as from the date in which it leaves the position when the work done by them is related to the sector to which they provided their services. This disqualification extends to those persons within the second degree of consanguinity or second of affinity, or first civil degree with the person that was a public servant.
- (m) The inspector that fails to comply with the duty to submit information to the State Entity related to the noncompliance with the contract, with events or circumstances that may be considered acts of corruption that are described as legal offences, or that may jeopardize the performance of the contract. This disqualification will be for a term of five (5) years as from the date of firmness of the administrative decision that so declares, once the respective administrative activity has concluded.
- (n) The contractor that incurs in one of the following conducts: (i) to have been the subject of 5 or more fines throughout the performance of one or several contracts, during one same fiscal term with one or several State Entities; (ii) to have been the subject of declarations of contractual default of at least 2 contracts

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

throughout one same fiscal period with one or several State Entities; (iii) to have been the subject of 2 fines and 1 default during one same fiscal period, with one or several State Entities. The disqualification will be for 3 years as from the date of registration of the last fine or default in the RUP, according to the information forwarded by the State Entities.

On the other hand, article 8 of law 80 of 1993 points out that the following cannot take part in tenders or competitive processes or enter into state contracts with the respective State Entity¹⁰:

- (a) Those who were members of the management or directive board, or public servants of the contracting State Entity. This incompatibility only comprises those who discharged duties in the directive, advisory or executive service and it extends for the term of one (1) year, as from the date of retirement.
- (b) The persons with kinship relationship up to the second degree of consanguinity or second of affinity, or first civil degree with the public servants of the directive, advisory, executive or with the members of the management board or council, or with the personas that exercise the internal or fiscal control of the contracting entity.
- (c) The spouse or partner¹¹ of the public servant in the directive, advisory, executive level or a member of the management board or council or of the personas that exercise the internal or fiscal control.
- (d) The corporations, associations, foundations and the joint stock companies that are not considered as open corporations, as well as the limited liability companies and any other partnerships in which the public servants of the directive, advisory, executive or the members of the management board or council, or the spouse or partner within the second degree of consanguinity or second of affinity, or first civil degree or any of them has participation or discharge direction or management duties. This cause of incompatibility does not apply when, due to a legal provisions or the by – laws, the public servant in the aforementioned levels must discard in them directive or management duties.
- (e) The members of the management boards or councils. This incompatibility only applies to the entity to which they provide their services and to those of the administrative sector to which the same is attached.
- (f)) Directly or indirectly the persons who discharged duties in the directive level in State Entities and the companies of which they are part or are related in any capacity, for the two (2) years after the termination of the public duties, when the purpose carried out by them is related to the sector to which they provided their services.

This incompatibility also operates for the persons within the second degree of consanguinity or second of affinity, or first civil degree of the former public servant.

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.

In the causes of disqualification due to kinship or marriage, the relationship disappears due to death or to the dissolution of the marriage or of the civil partnership.

IV Financial capacity

The purpose of the financial capacity indicators is to establish some minimum conditions that reflect financial health of the bidders through their liquidity and indebtedness. These conditions show the bidder's aptitude to comply, in a timely and full manner, with the purpose of the contract.

The financial capacity required in a Procurement Process must be adequate and proportional to the nature and the value of the contract. In consequence, the State Entity must establish the financial capacity requirements based on its knowledge of the sector related to the purpose of the Procurement Process and to the possible offerors (see the Guide to make Sector Studies at <https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias>).

Taking into account the nature of the contract to be entered into and its value and terms of payment, the State Entity must use the indicators that it deems as adequate regarding the purpose of the Procurement Process.

The State Entities must not limit themselves to determining and applying, in a mechanical manner, financial formulas to determine the indicators. They must know each indicator, its calculation formulas and its interpretation.

A. Financial capacity Indicators

The financial capacity indicators contained in article 2,2,2,1,1,1,5,3 of Decree 1082 of 2015 are:

- Liquidity Ratio = Current Assets / Current Liabilities, which determines the bidder's capacity to comply with its short – term liabilities. The higher the liquidity ratio, the lower the probability that the bidder defaults its short – term liabilities.
- Indebtedness Ratio = Total Liabilities / Total Assets, which determines the bidder's level of indebtedness in the funding structure (liabilities and equity). The higher the indebtedness ratio, the higher the probability of the bidder being unable to pay its liabilities.
- Interests' Coverage Ratio = Operational Profit / Interest Expense, which reflects the bidder's capacity to honor his financial liabilities. The greater interest coverage, the lower probability of the bidder defaulting its financial liabilities.

The State Entity must determine each enabling requirement taking into consideration what each indicator measures. If the indicator represents a higher likelihood of Risk as the figures increase, the State Entity must set as requirement a maximum figure and if the indicator represents a lower probability of Risk as the figures increase, the State Entity must establish a minimum. For example, a higher indebtedness ratio is the probability that the contractor defaults the payment of its liabilities, and therefore the State Entity must establish a maximum value for that ratio, which must be adequate and proportional for the Procurement Process.

The table below shows the interpretation of each one of the financial capacity indicators that the RUP must contain and their relationship with the probability of Risk:

Indicator	If the indicator is higher, the probability of Risk is	Limit ¹²
Liquidity Ratio	Lower	Minimum
Indebtedness Ratio	Higher	Maximum
Interest Coverage Ratio	Lower	Minimum

B. Additional financial capacity indicators

The State Entities may establish indicators additional to those established in item 3 of article 2.2.2.1.1.1.5.3 of Decree 1082 of 2015, only in those cases in which it is necessary due to the characteristics of the object to be contracted, the nature or complexity of the Procurement Process.

It is important to take into account that the indicators can be ratios as in the case of the liquidity ratio (current assets divided by the current liabilities) or absolute values such as the working capital and the equity.

The table below presents some additional financial capacity indicators:

12. The State Entity must establish as requirement that the bidder's ratio is lower than or equal to the highest or maximum limit established for each one of them.



Indicator	Formula	Observations
Working Capital	$\frac{\text{Current assets}}{\text{Current liabilities}}$	This indicator represents the bidder's operational liquidity, namely the bidder's remnants once it has liquidated its current assets (turned them into cash) and paid the short-term liabilities. A positive working capital contributes to the efficient development of the bidder's economic activity. Its use is recommendable when the State Entity has to analyze the level of liquidity in absolute terms.
Cash Ratio	$\frac{\text{Cash}}{\text{Current liabilities}}$	The cash is the asset with the highest level of liquidity that a bidder may have. The cash ratio considers the ratio between the immediate availability of funds and the short – term liabilities. Its use is recommendable when the liquidity is an important factor for the success of the purpose of the Procurement Process.
Acid Test	$\frac{(\text{Current assets} - \text{Inventories})}{\text{Current liabilities}}$	It measures the bidder's liquidity in a more stringent manner than the liquidity ratio, as it does not consider inventories. The inventory is excluded taking into account that it is the less liquid account of the current assets and must not be used to pay the short – term liabilities.
Concentration of short – term indebtedness	$\frac{\text{Current liabilities}}{\text{Total liabilities}}$	It measures the proportion of the bidder's short – term debt (less than 1 year) against its entire indebtedness. It is recommendable to include this indicator when there is a Risk associated to the lack of payment of the short – term debt, and hence a higher short – term indebtedness level may affect the bidder's ability to comply with the purpose of the contract.
Concentration of long – term indebtedness	$\frac{\text{Non-Current liabilities}}{\text{Total liabilities}}$	It measures the proportion of the bidder's long – term debt (more than 1 year) against its entire indebtedness. It is recommendable to include this indicator when (i) there is a Risk associated to the lack of payment of the long – term debt, and hence a higher long – term indebtedness level may affect the bidder's ability to comply with the purpose of the contract; and (ii) the contract's term is of more than 1 year.
Equity	$\frac{\text{Total Asset}}{\text{Total liabilities}}$	It measures the level of the bidder's own resources. Its use is advisable when the State Entity requires to analyze the quantity of its own resources in absolute terms when the budget of the Procurement Process is very high and the State Entity must assure the continuity of the bidder through time.



The organizational capacity is a bidder's ability to comply, in a timely and complete manner, with the purpose of the contract as a function of its internal organization. Decree 1082 of 2015 defined the profitability indicators to measure the organizational capacity of a bidder taking into account that it is well organized when it is profitable.

A. Organizational capacity Indicators

The organizational capacity indicators contained in article 10 of Decree 1510 of 2013 are:

- Return on Equity: Operational Earnings / Equity, which determines the profitability of the bidder's equity, namely, the capacity to generate operational earnings for each peso invested in the equity. A higher return on equity evidences a higher profitability of the shareholders and therefore the better organizational capacity of the bidder.
- Return on assets: Operational Earnings / Total Assets, which determines the profitability of the bidder's assets, namely, the capacity to generate operational earnings for each peso invested in the assets. A higher return on assets evidences a higher profitability of the business and a better organizational capacity of the bidder. This indicator must always be equal to or lower than the Return on Equity.

The determination of each enabling requirement must fall within the analysis and the concept of what the indicator measure. If the indicator represents a higher probability of Risk as its value is higher, the State Entity must establish a maximum value for the enabling requirement. If the indicator represents a lower probability of Risk as its value is higher, the State Entity must establish a minimum.

The following table shows the interpretation of each one of the indicators of organizational capacity that the RUP must contain and their relation with the probability of the Risk:

Indicator	If the indicator is higher, the probability of Risk is	Limit ¹³
Return on Equity	Lower	Minimum
Return on assets	Lower	Minimum

13. Ibidem.

B. Additional organizational capacity indicators

The State Entities can establish organizational capacity indicators additional to those established in item 4 of 2.2.2.1.1.1.5.3 of Decree 1082 of 2015, only in those cases in which, due to the characteristics of the object to be contracted, the nature or complexity of the Procurement Process so requires.

The table below presents some additional organizational capacity indicators that the State Entities can include to measure the return of the investments and the efficiency in the use of the assets. Colombia Compra Eficiente suggests to the State Entities to make a complete financial analysis before using the following indicators to assure that the same are relevant in the Procurement Process.

Indicator	Formula
Gross Margin	$\frac{\text{Gross Profit}}{\text{Operational revenues}}$
Operational Margin	$\frac{\text{Operational income}}{\text{Operational revenues}}$
Net Margin	$\frac{\text{Gross Profit}}{\text{Operational revenues}}$
Return on invested capital	$\frac{\text{Operational income} \times (1 - \% \text{ taxes})}{\text{Liabilities} + \text{Equity} - \text{cash}}$
Rotation of total assets	$\frac{\text{Operational revenues}}{\text{Total Assets}}$
Rotation of fixed assets	$\frac{\text{Operational revenues}}{\text{Fixed assets}}$
Rotation of inventories	$\frac{\text{Operational Costs}}{\text{inventory}}$

VI How to fix the financial capacity and organizational capacity indicators?

The State Entity must determine the limit for the financial capacity and organizational capacity indicators as a result of the analysis of the criteria established in section I.B. and it must avoid doing it in a mechanical

manner because each Procurement Process has a different nature and is associated to particular Risks.

The State Entity must determine the financial capacity and organizational capacity indicators, and the relationship of dependence between each indicator and the performance of the contract. The stronger this relationship, the more rigorous the analysis of the data to establish the limits of the enabling requirements and the indicators established must be more stringent.

In case that there is not a strong dependency relationship between each indicator and the execution of the contract, the State Entity must take care not to exclude possible bidders that, even though in a specific indicator have a worse performance than the average of their sector, are capable of taking part in the Procurement Process and to comply with the purpose of the contract. For this, the State Entity can fix more flexible limits according to the behavior of the economic sector, studying, for example, the maximum and minimum figures of the indicator for the companies the subject of analysis.

The Guide to Make Sector Studies (<https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias>) determines the manner to make the calculations that allow to understand the statistics of the sector under study in order to have tools that help to define the limit of the indicators.

The State Entity must establish the appropriate limit of the indicators taking into account the size of the sample (number of data of the sample), because the quality of the analysis of the data depends of it. A higher sample size means a greater reliability of the conclusions of the analysis as the sample comprises a better representation of the sector's behavior. When the sample comprises few data, there is the possibility that the data gathered seem like typical data¹⁴, when in fact they are not. Nevertheless, even in larger samples, there may be atypical data¹⁵, which can distort the study of the sample.

Colombia Compra Eficiente recommends the State Entity to analyze the data contained in the sample using graphic and statistical tools. The plotting of the data allows to see the general behavior and to identify the main characteristics thereof. Afterwards, it is important to calculate basic statistical measures to understand the behavior of the indicator in the economic sector under analysis. The Guide to Make Sector Studies ([http://https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias](https://www.colombiacompra.gov.co/manuales-guias-y-pliegos-tipo/manuales-y-guias)) contains methodologies suggested to make these graphic and statistical analyses.

Once the State Entity establishes the value resulting from the graphic and statistical analysis, it must validate the limit according to what was mentioned in section I. B of this Manual.

As there are indicators that result from making divisions between amounts, the State Entity must explicitly establish in the Process' Documents a rule to determine how it will assess the indicator when the denominator is zero, as in this case the mathematical operation is not possible. For example in the case of the interest coverage ratio, there may be companies that have no financial liabilities and therefore have no financial expenses, so the denominator is zero (0) and it would not be possible to calculate it. In this case, the rule can be that the bidder that has no financial liabilities is qualified.

14. A typical data is the one that is numerically near to the majority of the data of the sample.

15. An atypical data is the one that is numerically distant from the majority of the data of the sample.



Example:

The State Entity has financial data of 15 potential offerors. The table below presents the indebtedness ratio of each one of them:

Indebtedness Ratio (%)
68
55
47
50
92
56
60
49
29
26
80
53
98
52
61

To have an idea of the behavior of the indebtedness ratio of the sector’s sample, the State Entity proceeds to build the stem – leave graph to see the concentration of the data:

- 1. Definition of stem and leave: For this example, the stem is the first digit of the indebtedness ratio. The leave corresponds to the second digit of that figure.
- 2. Order of the figures: The stems must be ordered in a vertical manner in an ascending order and it enumerates the leaves that correspond to each stem in a horizontal direction, from lower to higher.



Stem	Leaves
0	
1	
2	69
3	
4	79
5	02356
6	018
7	
8	0
9	28
10	

The foregoing graph allows the State Entity to observe the concentration of the data delimiting the figures that are more or less frequent. The less frequent ones are those located at the ends of the graph and correspond to those providers that have a low or high indebtedness ratio (20% - 29% and 90% - 99%). The most frequent ones are evidenced in the peak of the graph and correspond to the suppliers that have an indebtedness ratio of between 50% and 59%. The latter represents the range in which most data can be found. It is important to stress that if the sample does not have an acceptable number of bidders, the State Entity cannot recognize if a figure corresponds to an atypical value or to a value that behaves as an average. The preceding graph allows concluding that most of the possible offerors have an indebtedness ratio of between 40% and 60%. In addition, there are possible offerors with high and low indebtedness ratios in both the upper and lower ends.

The statistical calculation provides an additional source to analyze the behavior of the indebtedness indicator in the sector. The table below presents the measures calculated for this exercise¹⁶:

Average	58%
Standard Deviation	19%
Median	53%

It is possible to conclude that the deviation of the data is quite high when compared to the average, because of the distortion generated by the extreme data.

The distortion generated by the extreme data can even affect the analysis of the indebtedness ratio of the sample. To correct the foregoing, it is convenient to use the trimmed mean¹⁷ to soften the impact of the

16. See Annex 1 of the Guide to Make Sector Studies.

17. See Annex 1 of the Guide to Make Sector Studies.



atypical data. In the example, the State Entity defines an $\alpha=10\%$ which means to trim 20% of the data (10% on each end). To figure out the number of observations that it is necessary to delete from the sample, the State Entity must multiply α by the size of the sample, which results in 1,5 observations (15 observations $\times 10\%$). Since it is necessary to determine a full number of data, the State Entity defines to round it upwards (1,5 \rightarrow 2).

Based on the foregoing, the size of the sample for the calculation of the trimmed mean is of 11 data, where the 2 figures with the lowest indebtedness ratios and the 2 ones with the highest indebtedness ratios were discarded. Below is the stem – leave graph built as from the new sample:

3	
4	79
5	02356
6	018
7	
8	0

Regarding the new sample, the calculated measures are:

Trimmed mean	57%
Standard Deviation	10%

The foregoing information allows to conclude that the trimmed mean is useful to reduce the dispersion (standard deviation) of the sample. In the first scenario, the standard deviation was of 19%. In the current sample the standard deviation fell to 10%. On the other hand, the large majority of the enterprises of the sample have indebtedness ratios that are located less than one standard deviation away from the mean, namely between 47% and 67%.

The State Entity must define a maximum indebtedness ratio, for which it must find a limit that agrees with the analysis of the economic sector and the nature of the Procurement Process including the Risks, the complexity and value of the contract.

The statistical analysis of the sector allows to conclude that an adequate indebtedness ratio is of 70% taking into account that (i) 67% is the upper limit of the trimmed mean plus the standard deviation, and (ii) the sample, because of its size, does not represent the total population of suppliers.

This amount allows to have a reference exclusively within the sector to validate the limit to be included in the Procurement Process. However, if in the analysis of the nature of the contract the State Entity determines that the indebtedness ratio is not a factor that has a significant incidence on the timely compliance with the obligations derived from the contract, it can make even more flexible the indebtedness ratio, namely to determine a higher limit. For example, the State Entity can add once again the standard deviation and in this

case it could establish an indebtedness ratio two standard deviations above the trimmed mean established, namely of approximately 80%. On the other hand, if the sample corresponds to a good approximation of the sector's behavior, it can choose the maximum indebtedness ratio within the sample under study.

VII Plural bidders

In a Procurement Process it is possible to have plural offerors through joint ventures, consortia and promises of a future company. The State Entity must determine in the Process' Documents, the procedure to calculate the indicators of the plural offerors starting from the information of each member of the plural offeror.

The State Entity is autonomous to establish the manner in which the joint ventures, consortia and promises of a future company accredit the compliance with the enabling requirements.

Below is the formula applicable to the indicators that are absolute values, such as the working capital:

$$(i) \text{ Absolute value indicator} = \sum_{i=1}^n \text{Indicator}_i$$

Where n is the number of members of the plural offeror (joint venture, consortium or promise of a future company).

For the indicators that come from the division of accounts of the financial states, Colombia Compra Eficiente suggests the following options:

1. Weighing of the components of the indicators

In this option each one of the members of the offeror contributes to the total value of each component of the indicator according to its participation in the scheme of the plural offeror (joint venture, consortium or promise of a future company).

Below is the formula applicable to the indicators that are ratios in option 1:

$$(ii) \text{ Indicator} = \frac{\left(\sum_{i=1}^n \text{Component 1 of indicator}_i \times \text{percentage of participation}_i \right)}{\left(\sum_{i=1}^n \text{Component 2 of indicator}_i \times \text{percentage of participation}_i \right)}$$



Where n is the number of members of the plural offeror (joint venture, consortium or promise of a future company).

This option incentivizes that the member of the plural bidder with the best indicators has a higher participation in aforementioned plural bidder.

2. Addition of the components of the indicators

In this option each one of the members of the offeror contributes to the total value of each component of the indicator.

$$(iii) \text{ Indicator} = \frac{\left(\sum_{i=1}^n \text{Component 1 of indicator}_i \right)}{\left(\sum_{i=1}^n \text{Component 2 of indicator}_i \right)}$$

Where n is the number of members of the plural offeror (joint venture, consortium or promise of a future company).

In this option the indicator is the same independent of the participation of the members of the plural offeror.

Below are two examples that illustrate the calculation of the financial capacity indicators of a plural offeror following the recommendations set forth before:

In a Procurement Process there is a plural offeror made up by two members, A and B, who have a share of 60% and 40% respectively. To accredit the financial capacity, the State Entity defined, on top of the indicators contained in item 3 of article 2.2.1.1.1.5.3 of Decree 1082 of 2015, the working capital indicator. The table below presents the financial information of each one of the members of the plural offeror and the individual calculation of the indicators. The values of the accounts of the financial statements and the working capital indicator are expressed in millions of Colombian pesos:

Accounts	A	B
Current assets	1.413	1.117
Current liabilities	98	706
Total Assets	1.413	1.244
Total liabilities	855	1.021
Operational income	178	33
Interest Expense	59	4,4
Liquidity Ratio	14,3	1,58
Working capital	1.315	411
Indebtedness ratio	61%	82%
Interest Coverage Ratio	3	7,4

The calculation of the indicators for the plural offeror according to each one of the options explained above is as follows:

Option 1:

$$\text{Liquidity ratio} = \frac{\left((1.413 \times 60\%) + (1.117 \times 40\%) \right)}{\left((98 \times 60\%) + (706 \times 40\%) \right)} = 3,8$$

$$\text{Indebtedness ratio} = \frac{\left((855 \times 60\%) + (1.021 \times 40\%) \right)}{\left((1.413 \times 60\%) + (1.244 \times 40\%) \right)} = 68\%$$

$$\text{Interest coverage ratio} = \frac{\left((178 \times 60\%) + (33 \times 40\%) \right)}{\left((59 \times 60\%) + (4,4 \times 40\%) \right)} = 3,23$$

$$\text{Working Capital} = 1.315 + 411 = 1.726$$

Option 2:

$$\text{Liquidity ratio} = \frac{(1.413 + 1.117)}{(98 + 706)} = 3,14$$

$$\text{Indebtedness ratio} = \frac{(855 + 1.021)}{(1.413 + 1.244)} = 70\%$$


$$\text{Interest coverage ratio} = \frac{(178 + 33)}{(59 + 4,4)} = 3,32$$

$$\text{Working Capital} = 1.315 + 411 = 1.726$$

VIII How to verify the enabling requirements not certificated in the RUP?

Colombia Compra Eficiente recommends to the State Entities to establish in the Process' Documents the manner in which: (i) the bidders have to accredit the indicators required that are not included in the RUP; and (ii) the foreign bidders not obligated to be registered in the RUP must accredit that they meet the enabling requirements, either individual bidders or members of a joint venture, consortium or promise of a future company.

The bidder must accredit the experience demanded in the Process' Documents for which Colombia Compra Eficiente suggests to utilize certificates in which the legal representative of the bidder accredits the experience, listing and identifying the contracts that gave it its experience and the electronic mail and the phone number in which the State Entity can verify the truthfulness of the experience contained in the certificate. For these purposes Colombia Compra Eficiente suggests to utilize the certificate presented in Annex 1 of this Manual.



The State Entity can also utilize this form to request another type of information that may be relevant for the Procurement Process. For example, in the case of the Procurement Processes of information systems, it can ask for each contract an indication of whether or not the information system is in operation. When the bidder cannot obtain the certificate or when it wants to certify the experience derived from contracts entered into with individuals or legal entities that no longer exist, it can file with the State Entity a copy of the respective contract.

The legal capacity of the Colombian legal entities that are not registered with the RUP is accredited through the certificate of existence and incumbency and, if necessary, with the corporate by – laws and eventually with powers of attorney. The Chambers of Commerce of the main place of business issue the certificate of existence and incumbency in the case of commercial companies, branch offices of foreign companies established in Colombia, civil organizations, corporations, foundations, community action boards and other non – profit private entities.

On the other hand, the legal capacity of the foreign legal entities without branch office in Colombia is accredited with the documents established by the legislation of the country of origin, which must be submitted to the Procurement Process.

To accredit the financial capacity and the organizational capacity Colombia Compra Eficiente suggests to utilize certificates executed by the legal representative and the statutory auditor or auditor of the bidder, and if the bidder does not have the obligation to have an external auditor, by its accountant, which should be accompanied by the most recent audited annual financial statements. For these purposes Colombia Compra Eficiente suggests the certificate contained in Annex 2 of this Manual.

Lastly, Colombia Compra Eficiente recommends to include in the Process' Documents the following information relevant for the submission of offers by foreign bidders:

- **Language** – The documents with which the bidder accredits its enabling requirements that have been originally written in a language other than Spanish must be translated into Spanish and be submitted in its original language together with the translation into Spanish. The bidder can submit a non – certified Spanish translation. If the bidder is chosen to enter into the contract, it must submit the official, certified translation into Spanish of the documents submitted in foreign language. The official translation must be the same text submitted to accredit the enabling requirements.
- **Legalization of documents** - The documents submitted by bidders do not require any legalization whatsoever, with the exception of the documents produced abroad and the general and special powers of attorney, which must be given before a Public Notary.

The bidders can submit with their offers the documents produced abroad, and it will not be necessary to legalize them. To enter into the Contract, the successful offeror must submit the documents generated abroad duly legalized according to the Apostille Convention¹⁸ or legalized before the Colombian Consul.

18. Law 455 of 1998.

- **Financial Statements Cutoff Date** - The foreign offerors must submit their financial statements as of the cutoff date established in the countries of origin or in their corporate by - laws.
- **Currency** – The offerors must submit their financial statements in the legal currency of the country in which the same were issued and additionally in Colombian pesos. For the purposes of accrediting and verifying the enabling requirements, the bidder and the State Entity shall take into account the representative market rate in force on the date in which the financial statements were produced. For these purposes, the bidder and the State Entity shall take into account the exchange rates certified by the Financial Superintendence.

A¹ Form of the certificate of accreditation of experience to comply with the enabling requirements

[Fill with the code that identifies the Procurement Process]

Offeror:

Contracts' certification for,

Client 's Name		
Contractor's name (offeror or offeror's member)		
The contractor is a Plural bidder?	Percentage of participation	
Start Date	End Date	Duration in months
Contracted amount (including additions)		
Contract's Purposes		
Contact Person for verification		
Phone	Mobile	
Address		
e-mail		

Client's Signature

Name: _____

Position: _____



The Offeror accepts that [fill with the name of the State Entity] may contact the client to verify the information contained in the certificate.

A²

Form of the certificate of accreditation of the financial capacity and organizational capacity to comply with the enabling requirements

[Fill with the code that identifies the Procurement Process]

Offeror:

Summary of accounts of the Balance Sheet and Income Statement to verify the enabling requirements of financial and organizational capacity.

Account	Offeror Singular	Plural offeror		
	Offeror (Amount in Col. Pesos)	Participant N°1 (Amount in Col Pesos)	Participant N°2 (Amount in Col Pesos)	Participant N°3 (Amount in Col Pesos)
Current assets				
Total Assets				
Current liabilities				
Total liabilities				
Operational income				
Interest Expense				
Financial Statements' Cutoff Date				

* If the offeror is plural and has more than three participants it must insert the additional columns of the preceding table.



Financial capacity

individual Offeror		Plural offeror			
Share Percentage	100%	(State % participation)	(State % participation)	(State % participation)	100%
Indicator	Offeror's Ratio	Ratio of Participant N°1	Ratio of Participant N°2	Ratio of Participant N°3	Ratio of the Plural Bidder
Liquidity Ratio					
Indebtedness ratio					
Interest Coverage Ratio					

* If the offeror is plural and has more than three participants it must insert the additional columns of the preceding table.

Organizational capacity

individual Offeror		Plural offeror			
Share Percentage	100%	(State % participation)	(State % participation)	(State % participation)	100%
Indicator	Offeror's Ratio	Ratio of Participant N°1	Ratio of Participant N°2	Ratio of Participant N°3	Ratio of the Plural Bidder
Return on Assets					
Return on Equity					

* If the offeror is plural and has more than three participants it must insert the additional columns of the preceding table.

Attached to this certificate are the most recent audited financial statements and notes. We represent under oath, committing our personal liability as well as the institutional liability of the legal entities represented by us, that the information in the financial statements and in this form is true.



Signature of the Offeror’s Legal representative

Name: _____

ID Number: _____

Signature, Statutory Auditor CPA’S Signature

Name: _____

ID Number: _____

Professional
Card: _____

* Say if he signs as CPA or Statutory Auditor

Note: In the case of plural bidders, the Statutory Auditor or accountant of each one of the members of the plural bidder must sign and include his / her data in this form.