

GOVERNMENT PROCUREMENT

APPENDIX 1

COVERAGE ON GOVERNMENT PROCUREMENT

SECTION A

COLOMBIA

SUBSECTION 1

CENTRAL GOVERNMENT ENTITIES

Title VI of this Agreement shall apply to the central government entities referred to in this Subsection as regards the procurement of goods, services and construction services indicated below, when the value of the procurement has been estimated, in accordance with Article 173, paragraphs 6 to 8, of this Agreement, as equal to or higher than the corresponding thresholds below:

Goods:

Threshold: 130 000 Special Drawing Rights (hereinafter referred to as "SDR")

Services:

Threshold: 130 000 SDR

Construction Services:

Threshold: 5 000 000 SDR

Procuring entities:

Executive Branch

1. Departamento Administrativo de la Presidencia de la República
2. Ministerio del Interior y de Justicia
3. Ministerio de Relaciones Exteriores
4. Ministerio de Hacienda y Crédito Público
5. Ministerio de Defensa Nacional (see Note 2 below)
6. Ministerio de Agricultura y Desarrollo Rural (see Note 3 below)
7. Ministerio de Protección Social (see Note 4 below)
8. Ministerio de Minas y Energía (see Note 5 below)
9. Ministerio de Comercio, Industria y Turismo
10. Ministerio de Educación Nacional

11. Ministerio de Ambiente, Vivienda y Desarrollo Territorial
12. Ministerio de Tecnología de la Información y las Comunicaciones
13. Ministerio del Transporte (see Note 6 below)
14. Ministerio de Cultura
15. Departamento Nacional de Planeación
16. Departamento Administrativo de Seguridad
17. Departamento Administrativo de la Función Pública
18. Departamento Administrativo Nacional de Estadísticas
19. Departamento Administrativo Nacional de Economía Solidaria

Legislative Branch

20. Senado de la República
21. Cámara de Representantes

Judicial Branch

22. Consejo Superior de la Judicatura
23. Fiscalía General de la Nación

Control Agencies

24. Contraloría General de la República
25. Auditoría General de la República
26. Procuraduría General de la Nación
27. Defensoría del Pueblo

Electoral Organisation

28. Registraduría Nacional del Estado Civil (see Note 7)

Notes to this Subsection

1. All ministries and administrative departments are covered. Unless otherwise specified herein, Title VI of this Agreement applies to the "superintendencias", "unidades administrativas especiales", and "establecimientos públicos" of the entities listed in this Subsection.
2. Ministerio de Defensa Nacional: Title VI of this Agreement does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the United Nations Central Product Classification version 1.0 (hereinafter referred to as the "CPC version 1.0") by the Comando General de las Fuerzas Armadas, the Ejército Nacional, the Armada Nacional, the Fuerza Aérea Colombiana, and the Policía Nacional.

3. Ministerio de Agricultura y Desarrollo Rural: Title VI of this Agreement does not cover the procurement of food, agricultural raw materials/ inputs, and live animals related to agricultural support programmes and food assistance.
4. Ministerio de Protección Social: Title VI of this Agreement does not cover the procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 by the Instituto Colombiano de Bienestar Familiar (ICBF) for social assistance programmes.
5. Ministerio de Minas y Energía: Title VI of this Agreement does not cover the procurement of nuclear materials and technology by the Instituto Colombiano de Geología y Minería (INGEOMINAS).
6. Ministerio del Transporte: Only Article 175 paragraph 1 and 2 of Title VI of this Agreement shall apply to the procurements by the Unidad Administrativa Especial de Aeronáutica Civil (AEROCIVIL), except for the procurements related to infrastructure for the airport system or for the national air space system, which are not covered by Title VI of this Agreement.
7. Registraduría Nacional del Estado Civil: Title VI of this Agreement does not cover procurements for the preparation and conduct of elections.

SUBSECTION 2

SUB-CENTRAL GOVERNMENT ENTITIES

Title VI of this Agreement shall apply to the sub-central government entities referred to in this Subsection as regards the procurement of goods, services and construction services indicated below, when the value of the procurement has been estimated, in accordance with Article 173, paragraphs 6 to 8, of this Agreement, as equal to or higher than the corresponding thresholds below:

Goods:

Threshold: 200 000 SDR

Services:

Threshold: 200 000 SDR

Construction Services:

Threshold: 5 000 000 SDR

Procuring Entities:

1. All of the Departamentos
2. All of the Municipios

Notes to this Subsection

1. Title VI of this Agreement does not cover:
 - (a) procurements of food, agricultural raw materials/inputs and live animals related to agricultural support programmes and food assistance; and
 - (b) procurements of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 for social assistance programmes.

SUBSECTION 3

OTHER COVERED ENTITIES

Title VI of this Agreement shall apply to other entities referred to in this Subsection as regards the procurement of goods, services and construction services indicated below, when the value of the procurement has been estimated, in accordance with Article 173, paragraphs 6 to 8, of this Agreement, as equal to or higher than the corresponding thresholds below:

Goods:

Threshold: 200 000 SDR

Services:

Threshold: 200 000 SDR

Construction Services:

Threshold: 5 000 000 SDR

Procuring Entities:

Unless otherwise specified herein, Title VI of this Agreement applies only to the entities listed in this Subsection.

1. Agencia Logística de las Fuerzas Militares (see Note below).
2. Fondo Rotatorio de la Policía Nacional (see Note below).
3. Fondo Rotatorio del Departamento Administrativo de Seguridad (see Note below).
4. Instituto de Casas Fiscales del Ejército.
5. Dirección de Impuestos y Aduanas Nacionales (DIAN).
6. Instituto Colombiano del Deporte (COLDEPORTES).
7. Instituto Colombiano para el Desarrollo de la Ciencia y la Tecnología Francisco José de Caldas (COLCIENCIAS).
8. Instituto Colombiano para el Fomento de la Educación Superior (ICFES).
9. Instituto Nacional Penitenciario y Carcelario (INPEC).
10. Servicio Nacional de Aprendizaje (SENA).

Note to this Subsection

Title VI of this Agreement does not cover procurement of goods classified under Section 2 (food products, beverages and tobacco; textiles, apparel and leather products) of the CPC version 1.0 by the *Agencia Logística de las Fuerzas Militares*, the *Fondo Rotatorio de la Policía Nacional*, and the *Fondo Rotatorio del Departamento Administrativo de Seguridad* for the *Comando General de las Fuerzas Armadas*, the *Ejército Nacional*, the *Armada Nacional*, the *Fuerza Aérea Colombiana*, and the *Policía Nacional*.

SUBSECTION 4

GOODS

Title VI of this Agreement applies to all goods procured by the entities listed in Subsections 1 to 3, subject to the respective Notes to Subsections 1 to 3, and the General Notes of Subsection 7, except for goods that are required for conducting research and development services.

SUBSECTION 5

SERVICES

Title VI of this Agreement shall apply to all services procured by the entities listed in Subsections 1 to 3, subject to the Notes to the respective Subsections, the General Notes of Subsection 7, and the Note to this Subsection, except for the following services, as elaborated in the CPC Version 1.0.

1. Research and Development Services

Division 81. Research and development services

Group 835. Scientific and other technical services

Class 8596. Data processing required for carrying out scientific and technological activities

Class 8597. Trade fair and exhibition organisation required for carrying out scientific and technological activities.

2. Utilities

Division 69. Electricity distribution services; gas and water distribution services through mains

Division 94. Sewer and refuse disposal, sanitation, and other environmental protection services (except 949, which is covered by Title VI of this Agreement).

Basic telecommunication services (not including value-added telecommunication services)

3. Social Services

Division 91. Public administration and other services to the community as a whole; compulsory social security services

Division 92. Education services

Group 931 Human health services

4. Production of television programmes

Subclass 96121. Motion picture, video and television programme production services

Note to this Subsection

Regarding service concessions, in accordance with Article 32 of Law 80 of 1993, European suppliers will be treated as favourably as domestic suppliers, including the conditions, requirements, procedures and rules of selection. For greater clarity, no other obligation of Title VI of this Agreement shall apply to service concessions.

SUBSECTION 6

CONSTRUCTION SERVICES

A. Construction Services

Title VI of this Agreement applies to all construction services procured by the entities listed in Subsections 1 to 3, subject to the notes to the respective Subsections, to the General Notes of Subsection 7, and the Note to this Subsection.

Note to this Subsection

Notwithstanding any other provision of Title VI of this Agreement, a procuring entity of Colombia, in a procurement of construction services for the construction, maintenance, or rehabilitation of roads and highways, may apply a condition relating to the hiring of local personnel in rural areas in order to promote employment and improve living conditions in such areas.

B. Works Concessions

Works concessions contracts, when awarded by procuring entities of subsections 1 and 2, and provided their value equals or exceeds 5 000 000 SDR, are subject to the national treatment principle established in Article 175, paragraphs 1 and 2 of this Agreement and to Articles 173, 174, 179, 190 and 294 of this Agreement.

SUBSECTION 7

GENERAL NOTES

Unless specified otherwise, the following general notes apply without exception to Title VI of this Agreement, including all the Subsections to this Section.

1. Title VI of this Agreement does not apply to:

- (a) procurements of goods or services by a Colombian entity of a good or service obtained or purchased from another Colombian entity;
- (b) procurements of goods and services by the defence sector and in the Departamento Administrativo de Seguridad (DAS), where secrecy is required for such procurements;

- (c) the renting or acquisition of real estate;
- (d) set-asides of procurements below SDR 130 000 on behalf of MIPYMES; including any form of preference, such as the exclusive right to provide a good or a service and measures conducive to facilitate the transfer of technology and sub-contracting;
- (e) procurements under programmes of reintegration to civil life as a result of peace processes, to aid to persons displaced due to violence, to support those living in conflict zones, and general programmes resulting from the resolution of the armed conflict; and
- (f) procurements by the missions of the foreign service of the Republic of Colombia exclusively for their operation and management.

2. Entities Not Covered

Pursuant to its Law 1150 of 2007, Colombia shall ensure that each of the following Colombian entities conducts its procurements in a transparent manner, in accordance with commercial considerations, and treats suppliers of the EU Party at least as favourably as it treats domestic and other foreign suppliers with respect to all aspects of its procurement, including the conditions, requirements, procedures and awarding rules for a procurement.

1. Comisión de Regulación de Energía y Gas (CREG)
2. Unidad de Planeación Minero Energética (UPME)
3. Caja de Previsión Social de Comunicaciones (CAPRECOM)
4. Caja Nacional de Previsión Social (CAJANAL)
5. Empresa Territorial para la Salud (ETESA)
6. Imprenta Nacional de Colombia
7. Industria Militar (INDUMIL)
8. Instituto de Seguros Sociales (ISS)
9. Radio Televisión Nacional de Colombia (RTVC)
10. Servicio Aéreo a Territorios Nacionales (SATENA)
11. Empresa Colombiana de Petróleos, S.A. (ECOPETROL)
12. Interconexión Eléctrica S.A. (ISA)
13. ISAGEN

3. Threshold calculation formula

- (a) The threshold shall be adjusted at two- year intervals with each adjustment taking effect on January 1, beginning on January 1, 2014.

- (b) The calculation of the values of thresholds shall be based on the average of the daily values of the SDR to Colombian Peso exchange rate over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. The value of the thresholds thus revised shall, where necessary, be rounded down to the nearest thousand Colombian Pesos. This methodology can be modified by the EU Party and Colombia within the Trade Committee meeting as described in Article 12 paragraph 4 of this Agreement.

4. Colombian authorities, for the purposes of Article 190 of this Agreement

In the case of Colombia, the Tribunal Contencioso Administrativo and the Consejo de Estado are impartial authorities for the purposes of Article 190 paragraph 6 of this Agreement. As these impartial authorities do not have authority to provide for the interim measures referred to Article 190, subparagraph 7(a) of this Agreement, the remedies available to the Procuraduría General de la Nación shall be deemed to satisfy the requirements of that subparagraph. The Procuraduría General de la Nación is an independent agency that has the authority to suspend tendering procedures and the awarding of a contract in the course of any disciplinary proceedings brought against the government agents responsible for a procurement.