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A Comparative Analysis of Public Procurement Laws in Ecuador, Colombia, and Peru.

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Abstract

Public procurement is a fundamental process that plays a crucial role in the economy and development of countries. Similarities and differences were identified among the public procurement laws of Ecuador, Colombia, and Peru through comparative tables and ATLAS.ti. Based on this analysis and a scientific literature review, the spirit of these laws was determined, leading to further discussion. The scope of application, guiding principles, procurement procedures, procurement thresholds, oversight bodies, sanctions and responsibilities, as well as similarities and differences in disqualifications or impediments to contract, were addressed.

Keywords: *Public Procurement, Ecuador, Colombia, Peru, Contracting*

Introduction

Public procurement is the process by which government entities acquire goods, services, or construction works from private companies. This process is governed by specific laws and regulations that aim to ensure transparency, competition, and efficiency in the use of public resources. Public procurement can be used for a wide variety of purposes, from infrastructure construction to the acquisition of medical or technological supplies (Behraves et al., 2022).

Public procurement is a fundamental process in the management of state resources and plays a crucial role in the economy and development of countries (BID, 2020). Public procurement has a key role in supporting this function throughout all stages of the market development process and identifying tools and actions that can be implemented in different phases of the procurement cycle to achieve it (Bleda et Chicot, 2018).

In this article, a comparison will be carried out between the Public Procurement Laws of Ecuador, Colombia, and Peru. The scope of application, guiding principles, procurement procedures, procurement thresholds, oversight bodies, sanctions and responsibilities, as well as similarities and differences in disqualifications or impediments to contract will be analyzed.

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One of the highlighted aspects is the importance of promoting transparency in public procurement processes. In relation to this, (Chiappinelli, 2020) indicates that a more rigorous and effective audit policy can reduce the occurrence of corruption by increasing costs for companies attempting to inflate contract costs. Independent supervision of the execution of public contracts by an external authority can reduce levels of inflated costs and corruption compared to systems where this function is integrated within the contracting authority.

Therefore, this study concludes that the legislations promote transparency to prevent corruption and ensure fairness in competition among suppliers. The adoption of innovative public procurement offers a promising opportunity to overcome the existing structural divide between academia and industry (Lobera et Lobera, 2023).

In this regard, it is relevant to analyze and compare the laws and regulations governing public procurement in different countries to identify similarities and differences that may influence transparency, efficiency, and equal opportunities in these processes.

Literature Revision

In the last decade, competitive tendering has become the predominant approach for procuring public passenger transport services. Since December 2009, EU Regulation 1370/07 establishes the legal framework for EU member states regarding the eligible forms for contracting authorities to award contracts for passenger services in various types of transport (Papaioannou et al., 2020).

In the field of transportation in general, competitive tendering implies that a contract to operate or provide a transport service is subject to competition, where the contract is awarded to the bidder with the lowest cost, even if it offers the most attractive combination in terms of cost/quality. This contract has a defined duration, after which the operation is subject to competition again. Competitive tendering contrasts with the traditional way of providing public transport services (Odeck et Harald, 2020).

The challenge of Public Procurement (PP) is a specific problem of supplier selection that goes beyond the usual objectives of the private sector, such as acquiring the right goods/services from the right source, at the right price, and with a high level of service. In the case of Public Procurement, strict compliance with the principles of non-discrimination, fair competition, and transparency in the awarding processes is also required, taking into account regulatory requirements and environmental impact (Dotoli et al., 2020).

Seven propositions have been formulated that, together, offer tools for public sector clients to proactively promote the development and implementation of radical innovations in civil engineering projects. These propositions cover topics such as project risk management, innovation project management, contract acquisition, and tendering (Lenderink et al., 2022).

The necessary practices for jointly specifying subcontracted services seem to be insufficiently developed compared to the wide range of potential practices. Public procurement defines a triadic cooperative environment and the important roles and practices of all parties involved. Managerial implications include the concern for involving stakeholders from the beginning of the process, focusing on value creation, conducting joint activities, and exchanging relevant information throughout the pre-tendering phase (Holma et al., 2019).

Methodology

Information was gathered from the Public Procurement portals of the studied countries to obtain their main Public Procurement laws. A comparison of the Public Procurement laws in Ecuador, Colombia, and Peru was conducted, analyzing guiding principles, procurement procedures, procurement thresholds, oversight bodies, disqualifications or impediments, as well as sanctions and responsibilities in each country. Excel 2016 and Word 2016 were used to create comparison tables. Similarities and differences between the Public Procurement laws of the three countries were identified in relation to the mentioned points. The evaluation and analysis were conducted using ATLAS.ti, and with the support of scientific articles, the spirit of these laws was determined, leading to a discussion of the results.

Results Analysis and Discussion

Global Comparison

Next, a comparison will be made between the Public Procurement Laws of Ecuador, Colombia, and Peru:

Scope of application:

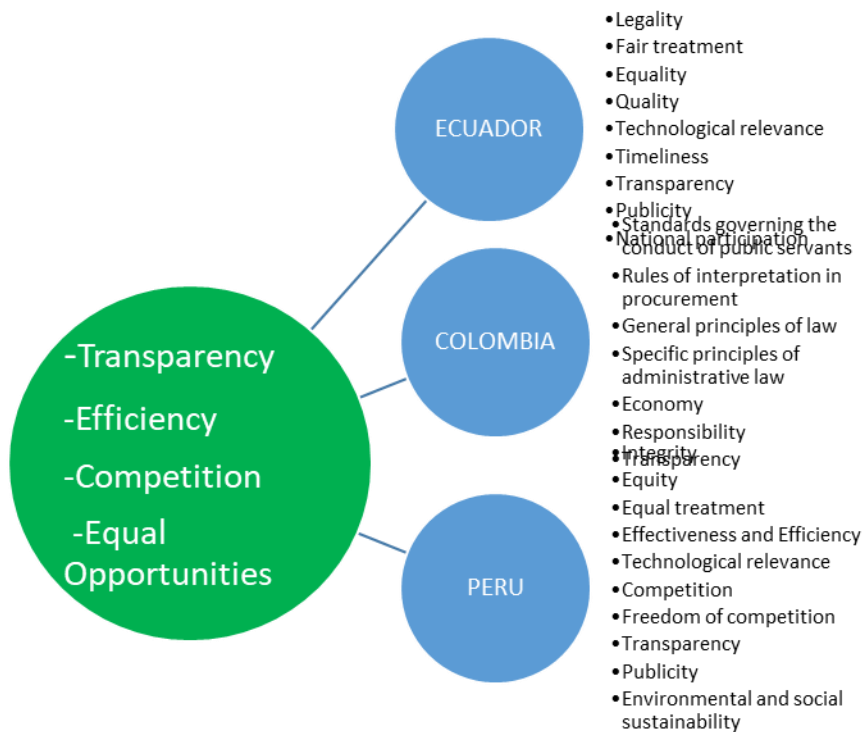
Similarly in Ecuador, Colombia, and Peru, the Procurement Law in these countries applies to public entities, including state agencies, regional and local governments, as well as public enterprises. However, procurement thresholds and covered entities may vary among the three countries.

Guiding principles:

The guiding principles in the public procurement laws of these three countries are similar, focusing on transparency, efficiency, competition, and equal opportunities. These principles aim to ensure the selection of the best offer and prevent corruption in the procurement processes.

Figure 1 has been developed to visualize these principles in each country, with a green circle highlighting the relationship between them as the main point.

Figure 1 - Analysis of the Principles of Public Procurement in the Three Countries.



Procurement Procedures:

Ecuador, Colombia, and Peru establish different procurement procedures, such as public tender, public competition, auction, direct contracting, among others. Although there are similarities in the basic procedures, each country has variations in how they are applied and the specific requirements for each one. **Table 1** indicates each procedure included in the laws of the countries under study. (Supplement, 2021) (Finance, 2019) (Congress of Colombia, 1994).

It is also noted that the numbering indicated on the left side of Ecuador has been taken as a reference base and related to the numbering in the other countries. It is concluded that Ecuador's regulations in this regard are more similar to those of Peru, and in four colored cases, all three legislations have similar types of procurement. In Colombia, the abbreviated selection is used for lower-value contracts, which, when present in Ecuador or Peru, has conceptual differences. The differences in specific procedures can influence how procurement processes are carried out in each country.

Table 1 - Public Procurement Processes or Types in the Three Countries.

	ECUADOR	COLOMBIA	PERU
1	<p>Electronic Catalog: A virtual store in which multiple providers of approved goods and services are registered.</p>		<p>1 Framework Agreement: It is a framework agreement between an entity and one or more suppliers to establish the general conditions applicable to future contracts.</p>
2	<p>Electronic Reverse Auction: Bidders submit their offers, and those who are qualified participate in a downward bidding process to provide</p>		<p>2 Electronic Reverse Auction: An online auction where suppliers compete to offer the lowest price.</p>

standardized goods and services.

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|----------|---|----------|--|----------|--|
| 3 | Micro Procurement:
Unplanned purchases that fall within an approximate range of \$6,300 USD (a coefficient multiplied by the initial state budget). | 3 | Limited Selection:
Applied in specific cases established by law. | 3 | Simplified Award: A direct procurement process for minor contracts or specialized services. |
|----------|---|----------|--|----------|--|
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- 4**
- Minor Procurement:**
Process for non-standardized or non-normalized goods or services, which falls under the lowest procurement threshold and only regional suppliers participate in the procurement process.
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| 5 | Quotation:
Process for non-standardized or non-normalized goods or services, which falls under the intermediate procurement threshold and is | 5 | Public Tender Procurement: It is a competitive process in which state entities publish a set of conditions, and interested parties submit their proposals to obtain the contract. | 5 | Public Tender: A competitive process in which companies submit proposals for a public contract based on specific criteria. |
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evaluated based on scores. Regional suppliers are given preference in the evaluation.

- 6 Tender:** Process for non-standardized or non-normalized goods or services, which falls under the highest procurement threshold and is evaluated based on scores. Only domestic suppliers have preferential treatment over foreign suppliers. 2, 4, 5, 6, **Merit-Based Procurement:** Applied in specific cases established by law. 6 **Public Bidding:** Called for the procurement of goods, supplies, and works.
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- 7 Consultancy:** For individuals or companies, and there are three types of procurement based on the amount. 7 **Direct Procurement:** Direct procurement is carried out when it comes to goods or services that cannot be obtained through other means, such as in cases of emergency or when there is only one available provider. 7 **Selection of Individual Consultants:** A competitive process to select an individual consultant to perform specialized services.
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8	Special Procedures: Fixed Price, Emergency, Real Estate, Lease of Real Estate, Inclusive Fair, etc.	8	Limited Selection: Applied in specific cases established by law.	8	Price Comparison: A direct selection process based on price comparison among suppliers.
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Author's elaboration, based on the public procurement laws of Ecuador, Colombia, and Peru.

The tendering process for the public procurement of pharmaceutical products has been adopted by many countries as a mechanism to lower pharmaceutical prices (Hilma N. Nakambale MPharm 1, 2022). (Er et Ballesteros, 2016) suggests a legal framework that involves open tenders for larger purchases and unmonitored ones for smaller ones. Additionally, it is mentioned that transparency and accountability are crucial to prevent corruption. Promoting an ethical culture within organizations and establishing effective sanctions for acts of corruption can also be encouraged. In general, it is important to have a strong commitment from political and business leaders to combat corruption and promote ethical practices at all levels of society. (Huber et Imhof, 2023) suggests the use of an innovative method that employs a deep learning architecture with a convolutional neural network (CNN) for image recognition to reduce collusion in tenders. (Gerstgrasser, 2019) indicates that most studies in the literature on reverse auctions or procurement focus primarily on complex environments.

In order to improve the traditional process and ensure transparency and data security, a decentralized bidding system based on blockchain technology is proposed. This innovative system aims to eliminate intermediaries and establish a trustworthy environment where data is protected and transparently accessible (Salar Ahmadisheykhsarmast, Sina Golmohammadi Senji, 2023). Providing training to manufacturers in decision-making regarding stochastic information seems to be a more promising strategy to improve their overall capacity. In the case of companies participating as bidders in reverse electronic auctions, it is crucial to have highly literate personnel in terms of risk and to train them in handling stochastic information (Engin et Vetschera, 2019). (Sarfaraz et al., 2020) examines the use of elliptic curve cryptography (ECC) and a dynamic cryptographic accumulator encryption algorithm as an enhancement in security between the auctioneer and the bidder. The proposed results and electronic bidding scheme are expected to drive further development of blockchain strategies, increasing transparency in public procurement.

Procurement Threshold:

Each country establishes thresholds in monetary units, from which the procedures established by law must be followed. These thresholds may vary and are defined based on the estimated value of the procurement and its type. In other words, a value from which the procedures established by law must be followed (Aguirre Ribadeneira, 2017). (Schotanus et al., 2022) indicates that approximately 20% of tenders show an investment in the order of bids once non-optimal fictitious bids are added to tenders that do not have established quality thresholds.

Control Body:

Ecuador has the General State Comptroller's Office, Colombia has the General Comptroller's Office, and Peru has the General Comptroller's Office. These bodies are responsible for supervising and overseeing public procurement processes, ensuring their legality, transparency, and efficiency. Additionally, the institutions responsible for public procurement should be considered, which are the National Public Procurement Service (SERCOP) in the case of Ecuador, the National Public Procurement Agency (Colombia Compra Eficiente) in Colombia, and the Central Public Procurement (PERU COMPRAS) in Peru (Constituyente, 2018) (Constituyente, 1991) (Congreso de la Republica, 1993).

Sanctions and Liability:

The three countries establish sanctions and mechanisms of liability in case of non-compliance with legal provisions in public procurement. These sanctions may include fines, disqualification from contracting with the State, and other disciplinary measures, aiming to ensure compliance with the rules and prevent acts of corruption. It is considered necessary to always include a sanction in a regulation, taking into account what (J. Liu et al., 2020) indicates, stating that the lack of unilateral punishment makes the mechanism less effective.

Specific Regulations:

(T. Liu et al., 2016) indicates that Australia and China can establish their own policies and management strategies to position themselves to perform more effectively and efficiently in improving bidding practices. Each country has its own legislation and specific regulations regarding public procurement. Although there are common principles such as transparency and competition, the specific details and requirements may differ among the three countries. Therefore, the types of procurement, as well as the thresholds, are different in each country, as are the specific requirements and regulations that apply to public procurement processes.

Contracting Culture and Practices:

In addition to legal and regulatory differences, there are also differences in contracting culture and practices in each country. This can influence how procurement processes are carried out, the relationships between public entities and suppliers, and the overall perception of transparency and integrity in procurement processes. It is important to note that these differences are general, so there may be variations and particularities in each country.

Similarities and Differences in Disqualifications or Impediments to Contracting.

In Table 2, the disqualifications or impediments of each country have been listed, and they have been compared among them by indicating YES or NO if their legislation includes them.

Table 2 - Analysis of Disqualifications or Impediments to Contracting in the three countries.

Disqualifications or Impediments	Ecuador	Colombia	Peru
The President, the Vice President of the Republic, the Ministers and Secretaries, etc.	Yes	No	Yes
Individuals who are disqualified from contracting by the Constitution and laws.	No	Yes	No
Public servants, i.e., officials and employees, who have participated in the contracting process.	Yes	Yes	Yes
Those who are suspended in the Unified Public Procurement Registry (RUP).	Yes	No	No
Those who, although not disqualified in the pre-contractual procedure, become disqualified at the time of entering into the contract.	Yes	No	No
Debtors in default to the State or its institutions.	Yes	No	No
Provincial councilors, municipal councilors, and members of parish boards within their respective jurisdictions.	Yes	No	No
Natural or legal persons, including their legal representatives, who have carried out studies, designs, engineering, or architectural projects.	Yes	No	Yes

Officials, servants, or employees who have participated in the pre-contractual or contractual stage and who may benefit from their actions or omissions, as well as their spouses or relatives.	Yes	No	No
Bidders for whom the SERCOP (Public Procurement Regulation Service) has determined the existence of a connection in accordance with the provisions of this Law regarding their participation in the pre-contractual procedure.	Yes	No	No
Members of boards or similar bodies, or the Technical Commission of the inviting entity, as well as their spouses or relatives.	No	No	Yes
Partners of partnerships that have been declared invalid, as well as partnerships in which they subsequently participate after said declaration.	No	Sí	No
Public servants.	Sí	Sí	No
Spouses or permanent partners, and individuals within the second degree of consanguinity or affinity with any other person who has formally submitted a proposal for the same bidding or competition.	No	No	Sí
Individuals who have family ties up to the second degree of consanguinity, second degree of affinity, or first degree of civil relationship with public servants at the managerial, advisory, executive levels, or with members of the board of directors.	No	No	Sí
Members of boards of directors or similar bodies.	No	Sí	No
Individuals registered in the Registry of Civil Reparations Debtors (REDERECEI), either in their own name or through a legal entity in which they hold shares or similar positions.	No	No	Sí
National or foreign legal entities that have made contributions to political organizations during an electoral process.	No	No	Sí

Legal entities whose members currently or previously formed part of legally sanctioned entities that are temporarily or permanently disqualified from participating in selection processes and contracting with the State.	No	No	Sí
Natural or legal persons included in the Lists of Multilateral Organizations of individuals and companies ineligible to be contracted.	No	No	Sí

Preparation by the author, based on the public procurement laws of Ecuador, Colombia, and Peru.

4.2.1. Conflicts of Interest:

Situations involving conflicts of interest can influence decision-making (Chandranegara et Cahyawati, 2023). Therefore, in all three countries, there is a prohibition on participating in public procurement processes when a conflict of interest exists. This means that individuals who have a direct or indirect interest in the procurement, whether personal or through their relatives, must refrain from participating in such processes.

4.2.2. Exclusion due to Sanctions: All

three countries establish that individuals or companies that have been previously sanctioned or disqualified for non-compliance in public procurement cannot participate in new procurement processes during the sanction period. Although all countries have sanctions and penalties associated with ineligibility or impediments in public procurement, the specifics of these sanctions may differ. This includes the type and severity of sanctions, such as fines, disqualifications, contract cancellations, among others, as well as the established procedures for imposing and applying such sanctions.

4.2.3. Prohibition of Collusion or Cartelization:

(Rosa M. Abrantes-Metz et al., 2006) indicate that conspiracies are difficult to detect because they take many forms. All elevate prices above the competitive level, which is why collusion or cartelization practices among suppliers to manipulate procurement processes and establish artificial prices or unfavorable conditions for the public entity are prohibited in the three countries. Participation in these practices can lead to sanctions and exclusions. Additionally, (Huber et Imhof,

2023) suggest the use of a data-driven approach to identify cartels involved in bid manipulation, proposing an innovative method that employs a deep learning architecture with a convolutional neural network (CNN) for image recognition. Furthermore, they propose constructing graphs that represent bid interactions between pairs of companies in different bidding processes, also considering bid rotation.

4.2.4. Declaration of Incompatibility:

Participants in procurement processes are required to make a declaration of incompatibility, in which they must report if they are in any situation that may affect their impartiality or independence in decision-making during the procurement process.

4.2.5. Specific Causal Factors:

Each country has its own specific causal factors that may result in ineligibility or impediments to participate in public procurement processes. These causal factors may vary in terms of their formulation and scope. For example, some countries have specific provisions related to criminal convictions, conflicts of interest, or previous contract breaches, while others may have additional or different causal factors, which can be administrative or civil penalties.

4.2.6. Duration of Ineligibility:

The duration of ineligibility varies among the three countries. This refers to the period of time during which an individual or company is excluded from participating in public procurement processes due to a specific causal factor. The durations are different in each country.

4.2.7. Automatic Exclusions:

Positive and negative sanctions are often proposed as possible structural measures to address social dilemmas (van Dijk et al., 2015). Therefore, some countries have automatic exclusions established in their legislation, which means that certain causal factors lead to automatic exclusion without the possibility of exceptions. In other countries, there is the possibility to request reconsideration or lifting of the disqualification under certain circumstances.

4.2.8. Disclosure Requirements:

The disclosure requirements for ineligibilities or impediments vary in each country. This refers to the obligations of entities and participants to report any situation that may result in ineligibility or impediment. These requirements vary in terms of the form and timing of disclosure.

The efficiency, quality, and transparency are the main weaknesses in the public procurement support processes (Abraham et Franken, 2023).

It is important to note that the differences mentioned are general, and there are variations and particularities in each country's legislation and regulations.

In line with these findings, it was observed that the public procurement laws in Ecuador, Colombia, and Peru establish specific provisions to ensure transparency in procurement processes, such as the publication of calls for bids and results on electronic procurement portals (Supplement, 2021) (Congress of Colombia, 1994) (Finance, 2019).

In this regard, it was observed that the public procurement laws in the three countries contemplate mechanisms to simplify processes and streamline procurement stages (Public Procurement Law of Ecuador, Year; Public Procurement Law of Colombia, Year; State Procurement Law of Peru, Year). However, it is highlighted that there are still obstacles in the effective implementation of these provisions, such as the lack of training for officials responsible for procurement processes (CAF, 2023).

Conclusions and Implications

In Ecuador, Colombia, and Peru, public procurement laws apply to public entities, including state agencies, regional and local governments, as well as public companies. However, there are differences in the procurement thresholds and covered entities in each country.

The guiding principles in the public procurement laws of the three countries are similar, focusing on transparency, efficiency, competition, and equal opportunities. Although there are similarities in the basic procedures, each country has variations in how they are applied and the specific requirements for each. Similar types of procurement have also been identified in the three legislations.

An important consideration for contracting is that its existence seeks to ensure transparency, impartiality, and integrity in public procurement processes. This contributes to strengthening trust in the public procurement system and protecting public resources and funds from possible corrupt or fraudulent practices.

It is important that the ineligibilities or impediments are properly defined and applied consistently and effectively. Additionally, it is crucial to have adequate supervision and control mechanisms to identify and sanction any attempt to circumvent or violate these restrictions.

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