A new approach to the quality/price concept in the Colombian public contracting[1].

Un nuevo enfoque del concepto calidad/precio en la contratación pública colombiana

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Abstract

This article have the purpose of realizing an approximation to a new concept about the relationship quality/price in our system on public contracting, using as references the high courts from the European Union, Colombian and doctrine that allows to put a perspective from the public contracting, integrating the most important principles o our public administration and contractual and why they necessarily affect the goods providing and public services.

The Colombian law 1150 from 2007, in its fifth article, determined that in the selection process in which you have technical and economical factors, the offer would be more advantageous if achieve these three concept´s; a) the quality-price elements supported on scores or formulas written on

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the contract conditions chapter; or b) The elements of quality-price weighting that represents the best cost-profits relationship for the entity.

The previous concept implies gtheat the vinculación to the interpretation process of the Good administration principle because necessarily it must be considered the cualitativo aspects that integrates the contract from the performance And value point of view.

This way of thinking the public contracting is being contrasted against the Europe Union model, in which there's applied the efficiency principle, searching for a better quality without searching only the lowest price, putting as a priority el achievement of the contribuyen necessities with public contracts and public policy's, putting a plain and relatively high quality standards that the contractors have to achieve in order to aspire for the contract.

Key words

Price-quality, efficiency, state entity's, Europe Union, Public contracting, public policy's

Resumen

La calidad en la contratación púbica supone el cumplimiento de principios como la eficiencia, economía y concurrencia a la competencia. En el marco de algunos procesos de selección en el contexto de la contratación estatal, se puede evidenciar que no hay transparencia, ni igualdad; ya que, se considera que la oferta más viable es la de menor valor sin importar su calidad. Es por ello que en el ámbito internacional se ha considerado que es más importante buscar la calidad antes que el valor; en razón a que la selección del menor valor puede ser la causa de acciones ilícitas.

El principio de la integridad se resalta en el manuscrito, en aras de contrarrestar la corrupción, con ayuda del principio de trasparencia e igualdad. Lo anterior supone impulsar nuevas políticas públicas en las que el legislador europeo propone impulsar la creación de un mercado propio proporcionando libertad y a partir de ello, analizar todos los posibles contratistas como iguales, dentro de una sana competencia. También se pretende más atención al momento de la ejecución del contrato con el fin de que si se presenta alguna irregularidad se establezcan sanciones contractuales.

Por otro lado, la relación costo-calidad se debe regir por unas normas técnicas, explicando el precio como factor económico y la calidad como el factor técnico; y en todo caso, en la calidad también se incluye la innovación y la eficiencia del contrato.

Palabras Clave

Calidad, precio, corrupción, selección, políticas públicas

Introduction

1. The quality concept on the public hiring

"The public contracting is a fundamental pillar from the strategic governance and the services performance."

"The new public policy's in which is prioritizing the better state contract execution in order to achieve the best result for the associates that implies the intrinsic elements are adopted, as the social, environmental and research objectives" (Alter, 2015). in order to achieve a better life quality for the associates.

That implies that the state entities from Colombia must find the value/money generation when they pretend to achieve the efficacy, efficiency, economy and the concurrence o competition principals, in the development for the 209 article and the planning on the state contracts.

From the UE and Different countries around the world, like the USA, it has been forgotten the concept inside the contracting in which is said that the money saving is an important part of the public contracting, allowing to create a new international standard among the countries that already applies the new principled tendency into the public contracting, which is regulated by a group of principles, which are, according to the law 80 art 23 from 1993: transparency, economy, responsibility, planning and objective selections.

The concept that the Colombian legislator proposed on the 1150 law from 2007 about the lesser value is a direct threat to all the past principles and it even suppose a possible violation to the associates rights.

Its said that the lesser value is the cheapest offer as the best and the one the administration have to hire, leaving behind distinct benefit aspects from the other competitors, violating directly the equality, showing us an approach to analyze how "the contractor and the legal operator have their hand tied up by the lesser value, unknowing the economical, social and ecological spheres that are now in our society, the equity between present and future generations." (Tribunal Constitucional Español. STC 100 de 2020, FJ 3)

From the EU and different other o countries around the world, like USA, has been cast aside the concept inside the contracting that takes as a priority the money saving in the contracting, creating a new paradigm and international standard among the countries that already applies these new logic and valuations in the public contracting.

One of the most intriguing concepts that can be found these days is the one from William B. Eimicke about the how its created an annual budgetary plan in which its actually a priority the money saving in the public contracts and their efficiency "The decisions must be made among programs, services and products, and thinking about the possible failures when the deadlines are reached" (Cohen & Eimicke, 2020).

That's how eimicke explains how having a determined budget with the limits as clear as water for the activities achieving would generate a mayor efficiency, and it also can be related to an interesting proposal from the EU "imposing contractual penalties that "stimulate" the correct fulfillment of the social sensitivity of the contract, are, among others, very effective provisions in the consolidation of effective socially responsible contracting (Feliú, 2021)

The quality within the new international paradigm that is becoming popular refers to the fact that the lowest price shouldn't be the best option, it should be an aspect to take into account but that it's at the level of the rest of the parameters to be reviewed in a tender. The use of this concept of seeking quality before always looking for the cheapest is very important for the protection of tax principles (efficiency, equality for example) and the aforementioned principles governing public procurement.

Undoubtedly, better quality itself means better management, but what about the cost-benefit ratio?

The public procurement observatory of Spain says *"Quality is not a major expense, nor does it question in itself the operation of the principle of efficiency required in all public tenders"* (Feliú, 2021, P. 32).

The efficiency of public policies cannot be seen from a purely economist point of view, today it has been proven that almost no issue can be dealt with without interdisciplinarity involved, for public bidding it cannot be taken into account only the lowest price to carry out the works or provide a service, other opinions must also be sought from different forms of knowledge that can give voice to how quality influences the performance of public administration. Thus, it is clear that better quality brings with it greater efficiency.

Now the new requirement is to assess quality/profitability in public contracts, which generates new transversal macroeconomic benefits because now contractors must compete with a quality standard, becoming a priority over just maintaining a lower price and thus avoiding artificial offers.

Without this new quality standard, the rule of comparing offers is broken, which, in turn, would break the principle of equality because some qualities of the contractors, within which special emphasis is placed on criteria of social or environmental scope, creating a higher quality of the provision, which would generate a more global comparison of offers if you will.

Thus, quality within public procurement would be the study of different qualities of contractors that must be imposed as homogeneous standards on all bidders in order to comply with the principles of efficiency and equality and supplying the rights and needs of taxpayers through new more efficient contracts.

2. The value for money from the general principles of public procurement

2.1. From the perspective of the duty of objective selection

"The duty of objective selection understood as the most favorable offer for the entity, applicable to each and every one of the modalities and therefore to the procedures of state contracting, points to transparency and concurrence, the principle of equality of the proponents (Rusinque, 2014).

In the consecration of the law, in article 5 of law 1150 of 2007 it was declared that the lowest value as the only or most important aspect to review for the awarding of contracts in the administration, for which reason the legislator limits or restricts the contract awarder aspects to review before selecting the contractor, leaving aside aspects such as uniform and commonly used technical characteristics and the spheres of social, economic and ecological benefit as noted above.

Thanks to this, the lowest price was enshrined as the main objective of the objective selection without any assessment or possible interpretation by the legal operator, which is quite mediocre when someone thinks about how contracting should take into account aspects that guarantee standards of quality to ensure compliance with rights, services and public policies for taxpayers. This can seriously affect the constitutional rights of citizens.

The Colombian council of state has tried to give more tools from the jurisprudence, more precisely in the exp. 17366, in which it is said that it seeks to guarantee the principle of equality, however, if a proposal is low enough, that offer will be taken to seek the benefit of the lowest value.

This is not quality-price, it is just looking for the cheapest provider without stopping for a second to establish acceptable quality standards so that the constitutional rights of taxpayers and the principles of equality, efficiency and objective selection are guaranteed.

2.2. From the point of view of the principle of equality

The principle of equality is one of the fundamental pillars of our social rule of law, so much so that it appears in the constitution as one of the first generation fundamental rights, giving them a status that obligates the state to ensure compliance for with the citizen.

Therefore, it is imperative that this principle have to be applied at the time of public contracting, all contractors must have the same possibilities to be hired and must be at the same level as the rest, so that the final decision takes into account all options available with the same weight.

This principle is transgressed thanks to the fact that the choice of the contractor was established based on the lowest value, since the one with the cheapest offer, without this necessarily meaning a quality that meets minimum standards.

The quality-price must take into account the price, of course, but the legal operator cannot be forced to always hire the cheapest option, many important factors must be taken into account that should be at the same level.

To comply with the principle of equality, the lowest value should be left as one more aspect to be taken into account within the tender, not as *the* aspect, so the rest of the contractors would have the opportunity to present their proposals, even if it is something maybe a little bit more expensive, but it would give the opportunity and freedom to the legal operator to be able to choose options that guarantee the rights of taxpayers.

The ideal at this point of the analysis could be to give more freedom and tools to the legal operator so that he can guarantee the principle of equality, without having to be with his hands tied to always look for the lowest value without taking into account quality or other important aspects. in the acquisition, supplies and services that are equal to or more important than the price itself, which may result in a violation not only of this principle but also of the principle of effectiveness.

"The truth is that the current conception of awarding state contracts turns out to be very private law and detrimental to what the concept of Administrative Law represents (Santofimio, 2003: 171)"[4]

Thus, it is necessary to highlight the incorporation of more qualitative elements in the evaluation of public bidders to mitigate environmental aspects, public health and in general the fight against poverty, social sustainability criteria in the diagram of the new global public policies.

2.3. From the perspective of the principle of efficiency

Efficiency cannot be limited only to the economic aspect, not only because the project is economically profitable or because its price is low enough to be considered a much safer investment makes it really better.

Efficiency must be measured from interdisciplinarity. Under the formula of the least value, the only thing they achieve is to limit the scope of state investments and therefore their quality, and if it affects their quality, obviously their own effectiveness is affected, the rule of law is violated. principle of effectiveness if the lowest value is used as a definitive way of contracting.

Legally and according to (Parejo, 1989: 218-219) effectiveness is defined as "the efficient use of resources" not the least use of resources or the greatest savings in resources, we speak of an efficient use of resources. Not only from the economic point of view but giving the legal operator the possibility of glimpses different ways in which an investment can be more efficient if you invest a little more and not just take the cheapest offer out of sheer impudence regardless of quality of the good acquired or supplied, or of the service provided.

[4] Rusinque, I. A. R. (2014). Menor Valor: Oferta Mas Favorable. *Rev. Digital de Derecho Admin.*, 11, 209.

The lower value also generates the so-called collusion, which is a type of fraud in which competitors and even the administration itself agree when carrying out the bidding.

This phenomenon violates equality in the competition and the real bid within the bidding process, within collusion everything is arranged so that competition is discouraged and generates problems of corruption and negligence in governance.

2.4. From the perspective of the principle of transparency

Since Law 1150 of 2007 was consecrated, it is a principle that strengthens since it guarantees and materializes public spending in a better way and allows a more detailed accountability of contractual public management, as a new modality of governance, manifestation of control social on public management (Romero, 2021).

So it is something that is deeply linked to the concept of lesser value, since, according to this law, the best way to manage public spending is through the logic of always looking for the cheapest.

However, this principle is much more than that, transparency refers to the fact that all the movements of the contracting offer, any minimal change, any data that is minimally relevant to the contractors, must be visible to the contractors, a access to information that is objective, clear, complete and proportional to decisions and cost and quality conditions.

The biggest problem is that, at the end of the day, the lowest value is once again an antagonist from the beginning, this time it is because the lowest value helps the negotiation between contractors, promotes money laundering, ignores the companies and promotes smuggling and affects the quality.

2.5. From the point of view of the planning principle

The planning principle is one of the most vital within the process that privileges the lowest value as the highest contracting criterion, since this principle defines the goods and services in conditions, technical characteristics and the search for an efficient policy. However, this is almost impossible, due to the lack of technocracy in the state, this means that when companies pass the technical sheet in order to define the parameters that the state puts in their contracts and that generate different costs, they which, thanks to the lower value, kills fair competition.

The procedure is done so that the technical sheet itself generates high risk rates in the long term that will end up being the subject of contractual and post-contractual problems, all for framing all the needs of the state in the reverse auction procedures, in the technical sheets (which are not very technical) and favoring the lowest price.

If a way of state contracting is structured that takes into account realistic prices and taking into account all the aforementioned principles and those that remain to be mentioned, "there would not be a need for so many mechanisms that do not reward the quality and guarantee of the goods and

services supplied to taxpayers. , avoiding the creation of price agreements to distort competition like the ones we suffer today."[5]

The Colombian Council of State pointed out that from the principle of planning in the various contractual stages, from the pre-contractual, the execution and the liquidation, this principle emerges consecrating duties, diligence, care, efficiency and responsibility with which the contractual manager must conduct the exercise of the contractual public function and budget (Consejo de Estado, Expediente 1999-02430-01-23829, 2013)

The relationship between governance and the right to good administration is clearly observed, protecting public resources and highlighting the qualitative criteria in the evaluation of offers to the state to enter into contracts for the acquisition of goods and services.

2.6. From the point of view of the principle of financial equilibrium of the contract

This principle of the financial equation is based on seeking fair remuneration for the work to be carried out, remuneration that is due to the nature of the contract and the amount of benefits assumed by the contractor.

The purpose of this principle is for the legislator is to achieve perfection and validation of the contract without directly affecting the economy of the contract or affecting other principles such as those mentioned above.

This financial balance does not mean under any circumstances that the contract must be too thrifty and always look for low prices, as the name of the principle itself says, it seeks a balance since the economy of the market and the quality-price ratio must be taken into account. the products that are offered by studying in depth how that particular market works, thus also having a precedent of which are the companies with the best productivity history, thus creating efficiency when it comes to perfecting the contract.

It is correlated with the principle of good administration to which public administrations generally submit, especially as Professor Ponce Solé points out "...in legal certainty, responsibility and the interdiction of the arbitrariness of public powers; in the principles of efficiency and economy that public spending must comply with in order to make an equitable allocation of public resources (article 31.2 CE)." (Romero & Moreno, 2015)

The relationship between the concepts of governance, good administration and the relationship with the qualitative criterion of the quality-price ratio in the public management of state contracting is then verified.

[5] https://www.sic.gov.co/sites/default/files/estados/082018/RESOLUCION-4604-SEGURIDAD-PRIVADA.pdf

2.7. The plurality of bidders

The idea of putting aside the importance of a lower price is that the other contractors have an opportunity to be able to win the contract, and thus also promoting that different companies are encouraged to enter the reverse auction, seeing what there are ways to have prices a little higher than the minimum, but always maintaining consistency with what can be seen in the market.

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3. The principles of public procurement within the US model

The main difference between the North American model and the Colombian model is that, thanks to the federal system managed by the United States, each state can have a different and particular regulation, however this does not mean that there is no coherence between the principles of the public procurement, quite the contrary, there are procurement regulatory bodies, among which are the Federal Procurement Regulations (FPR), which would eventually become the Federal Acquisition Regulations (FAR), in which the FPR, the DAR (Defense Acquisition Regulation) and the regulations governing NASA acquisitions.

3.1. How do these regulations defend the principles of public procurement?

From the principle of transparency, it is highly supported by procedures that promote the publication of the contract, so that all contractors are equally informed and have equal opportunities.

Without this transparency, or if the administration individually chose which of the contractors to deliver the information to, countless opportunities for corruption and for the benefit of some of the contractors would be created, seriously violating the principle of equality.

There are also so-called "change clauses", which can be included in the contract unilaterally by the administration and thus being able to modify the contract in the middle of the process, these clauses are a great contribution to the principle of transparency since they are completely public for the contractors and they are always aware of every detail of the contract and how far these clauses can go.

There are therefore two types of clauses that the Federal Acquisition Regulations have determined:

The clause for the supply contract and the clause for the construction contract, which determine how the reforms to the contract must be implemented and the limit of these, these reforms must always take into account four purposes:

Offer flexibility to the contract to monopolize technological advances.

- Approve the contractor more efficient works
- Allow the contractor to decide on some additions to the work without the need to sign a new contract.
- Provide the contractor with a direct contact to request claims.

As you can see, within all these things they try to guarantee several principles that will be delved into later, but it reflects how the FAR tries to maintain total transparency with the contractor and giving them all the facilities so that the contract is as more efficient and up-to-date as possible.

Within the North American public contracting structure, there are no gaps in which the least value can find a place within the contracting process, generating notable inefficiency; on the contrary, there are mechanisms dedicated to avoiding the violation of principles and giving guarantees, information and facilities to contractors, it is seen that they seek not only to have a reasonable value for money, but also that the contract and its execution generate remarkable efficiency

Within all of the aforementioned, the rest of the principles of public procurement are highly respected, such as equality, efficiency, economy, among others.

American contracting can be referred to as a pro-contractor model, in which they are given tools to be able to even change some aspects of the contracts if it is to generate a greater benefit or be more efficient.

Free competition is highly taken into account in all stages of the process, as well as equal opportunities to acquire the contract, delivering all the information to all contractors and making rigorous studies in the middle of the entire pre-contractual stage to avoid fraud.

3.2. From the beginning of integrity

"The principle of integrity stands as one of the most important pillars to fight corruption" (Romero, 2020), US contracting complies with this, since it has a strong base to support the principle of transparency and a flow of information that makes it very difficult to make a fraud or that there is a preference for a single contractor, also ensuring the plurality of candidates, equal conditions for candidates, thus also fulfilling the principle of participation.

4. Advances of the European Union in public procurement

The importance that the European Union gives to the legislation behind public procurement can be seen from how the legislation includes both substantive and procedural public procurement rules and resources.

Today, the new directives of the European Union have two main objectives, increasing their efficiency and effectiveness and adapting to the political and socioeconomic contexts.

The directives speak of a simplification of the normal ones to the point that it would facilitate the participation of PYMEs and even cross-border bidders and that it would also bring with it new approaches in common social objectives, environmental protection and innovation.

One of the greatest ambitions of the European Union is to create a European space for public procurement within the framework of the Community interior. Its principles can be found in the original decree of the European Union (Treaty of the European Union and Treaty of the functioning of the European Union) where you can find principles recognized even by the OECD itself, such as equal treatment, transparent call for tenders and non-discrimination, mutual recognition and the fight against fraud and corruption.

Under the governance schemes developed by the EU, in the framework of strategic public contracting, Professor Cerrillo Martínez "governance concept, it can be assumed that governance is constituted by the norms and rules that guide interaction within the framework of networks of interdependent public, private and social actors in the definition of the general interest in complex and dynamic environments, associating above all the idea of governance with a greater involvement of non-governmental actors in the design and implementation of public policies" (Martinez, 2005, p. 10), we can affirm that This model that the EU proposes on a contracting without discrimination of the nationality of the companies supposes something like a "great governance" within all the countries that make up the EU, being an advance in the use of this strategic public contracting model.

For some years now, it has been seen how the European Union legal system has promoted community directives that seek to guarantee the principles of objectivity, transparency, publicity and non-discrimination, all to avoid fraud in public procurement, guaranteeing in turn that the Sanctioned or non-national companies within the European Union itself have an opportunity to participate in public procurement.

Now the panorama of public procurement within the European Union is even more promising if it is still possible, new theories are being developed on how to manage funds when creating policies and public procurement, focusing on budget "savings".

An interesting concept of how the budget should be managed within a strategic public contracting or governance is that of William B. Eimicke "you must be sure that the financial resources not only find and hire the right people, but also must acquire the necessary facilities, equipment and technologies" (Cohen & Eimicke, 2020).

The European Union is trying to delve deeper into the principles that govern public policies and contracts and delving even deeper into their interpretations from a more directed look at the qualitative characteristics of the contract, since without taking into account the qualities within a contractual relationship a contractual decision cannot be considered correct.

Continuing with the qualitative line, the European Union intends not to focus so much on economic approaches, but to ensure a quality standard that satisfies the objectives of the contract.

The EU proposes that quality is not only in the technical aspects of the contract, but that "The quality of a public administration is also measured by the quality levels of its suppliers. It is necessary to promote both, so that society, services and workers benefit." (Feliú, 2020).

The directives of the European Union have reached a quite logical conclusion, if you increase the quality within procurement and public policies, you will inevitably increase their efficiency and effectiveness exponentially, you do not need a larger budget or a serious increase in the public spending, but to focus on the vital points within the contracts, on their qualities.

The scope that the European legislator wants to achieve is such that he wants to promote the creation in his own market within public procurement, by regulating only the issues that he considers transcendent, giving more freedom to potential contractors.

By setting this quality standard from which everyone must start, in theory, it is possible to comply with the principle of equality, since everyone has to start from that quality base, without this measure contractors would be seen with very unequal standards and therefore not there would be real competition.

4.1. The new quality standard would also be a direct combatant of the discrimination of offers thanks to the fact that the award criteria would be changed.

Now the bases on which the most advantageous offer will be determined will be the price or cost, and its relationship with the cost-effectiveness and in turn creating a better value for money and an evaluation of qualitative aspects such as innovation, environmental impact and environmental aspects. even social.

Another method of evaluating contractual aspects proposed in the EU directives is that of, like the United States, providing direct contact between the contractor and the administration, more specifically "Establishing a mechanism for reporting information or direct consultation by the administration, to verify compliance with the physical presence of personnel in the provision of the service." (Feliú, 2020).

So much so, that environmental protection measures in contractual activities are discussed in constitutional courts within the union, such as that of Spain, which says "...The principle of integration of environmental demands... is legally binding as an expression of the guiding principle

of social and economic policy enshrined in art. 45 CE and essential to move towards sustainable development" (Tribunal constitucional de España, 2022, STC 76/2022)

Demonstrating, once again, the importance of environmental protection in public policies and how its application would improve efficiency and promote sustainable development.

The EU strongly argues that qualitative aspects such as environmental impact and innovation would improve the quality of contracts and, again, improve their efficiency.

It is also proposed the application of a special "Attention" to the executory phase of the contract, an exhaustive monitoring of the minimum remuneration of the personnel, as well as setting contractual penalties as an incentive to avoid any type of "irregularity".

It can be affirmed that the regulatory framework of the EU has been completely overturned by this new concept of quality and its relationship with the qualities of the contracts and a high attention to the execution phase of the contract.

5. The value for money in public procurement from the jurisprudence of the Council of State.

The Council of State uses the original perspective enshrined in Law 80 of 1993 as a basis to define quality, where the elements of quality and price were already being taken into account when analyzing public contracts.

In article 4 numeral 5 of the aforementioned law it is stated that the cost and quality conditions must be subject to mandatory technical standards and numeral 5 literal c of article 24 states as mandatory the precise definition of cost and quality of the goods, works or services

On the other hand, Law 1150 of 2007 refers to "goods and services with uniform technical characteristics and common use by entities" as those that "have the same technical specifications, regardless of their design or descriptive characteristics. , and share objectively defined standards of performance and quality" (C E, 2017, Sentencia 11010326000200900024 00)

These definitions, when making a more exegetical interpretation, cannot summarize what they mean by "economic factors" since they cannot be summarized in the mere price (pecuniary value in which something is estimated) or in the cost (expenditure made for the obtaining or acquisition of a good or service), however, with some support of the principle of concordance stipulated in numeral 2 of article 5 of law 1150 of 2007 it is, in theory, sufficient for the administration to choose the best offer.

Thanks to the close relationship that exists between the aforementioned rules and the interpretation that can be made based on them, it can be understood, according to the court, that the expression "price" refers to the relationship between the economic factors of the proposal and that "quality" should be associated with the technical factors of the offer.

The aforementioned judicial corporation makes an interpretation in which we can understand what the legislator means by "quality" as set forth in Law 1150 of 2007.

This understanding offered by the court in this sentence is reinforced if "quality" is understood as an abstract noun that uses an object that is closely associated, again, with the "technical" aspect of the offer.

It is therefore understood, from what is interpreted in the norm by the Council of State, that quality within a contract is mainly focused on the technical specifications of the goods or services that are the object of the contract, differentiating itself from the European concept that introduces into quality the qualities of the contract beyond the technical or economic ones, one that also introduces innovation and environmental aspects as quality characteristics and also efficiency of the contract.

6. Conclusions

We can affirm of the Colombian model that, in comparison with the American and European models, it must evolve towards exceeding the price as a quantitative alphanumeric figure. For this analysis, the existence of the "lesser value" of some principles of public contracting to the time to bid or evaluate the offers of possible state contractors, putting aside important principles such as, for example, those of equality and efficiency, with the right to good administration.

This approach so focused on economism and in which little is done in depth about the other principles such as those previously mentioned or those exposed by the OECD, suggests an oversight in the review of the object of the contracts and in leaving the interpretation of quality so closed that is in Colombia.

From the US model we can highlight how it is focused on facilitating through the FAR the contractual processes between the administration and private contractors, even providing them with a direct communication channel between them and the state.

And it is even admirable how they made a federal regulation that maintains a regulated order throughout the country without affecting the independence of the states that are part of it.

The American model sees these aspects rewarded in greater efficiency and sees how the freedom that in a certain way is given to contractors can lead to modifications to the initial contract for the better, being more efficient or updating the works or services contracted, giving way to the innovation.

The European model is the one that stands out the most from the rest, being advanced in new quality concepts that promise a new way of contracting within the European Union.

The mere idea that state contracting within the European Union is not only between national but also non-national companies creates competition that cannot be seen anywhere else in the world, since the number of candidates for tenders grows exponentially, and with this growth

in competition, it is possible to afford to increase the standard quality of the goods or services purchased without having to seriously affect the agreed price

In addition, also to have a special effort in monitoring the activities of the contractor in the process of executing the contract, imposing clauses with significant penalties to "encourage" a correct execution of the contract.

It can be affirmed, conclusively, that the Colombian legislator has made an effort to maintain quality within public contracting but it has been poorly executed, violating various principles of public contracting.

But a great margin of improvement can be glimpsed if the leading models such as the American and, above all, the European approach are taken as a reference.

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