

**NATIONAL PLANNING DEPARTMENT  
DECREE 1510 OF 2013  
(July 17)**

“Whereby the public procurement and purchasing system is regulated”

**The President of the Republic of Colombia,**

Pursuant to his constitutional and legal powers, in particular those granted by section 11 of article 189 of the National Constitution and by Law 80 of 1993, Law 361 of 1997, Law 590 of 2000, Law 816 of 2003, Law 1150 of 2007, Law 1450 of 2011, Law 1474 of 2011, Decree - Law 4170 of 2011 and Decree - Law 019 of 2012, and

**WITNESSETH:**

Whereas, the National Government created, in Decree - Law 4170 of 2011, the National Public Procurement Agency — Colombia Compra Eficiente —, as the governing entity of the public procurement to develop and promote public policies and tools aimed to assure that the public procurement and purchasing system has optimal results in terms of the valuation of the public money through a transparent process.

Whereas, pursuant to Decree - Law 4170 of 2011 the National Public Procurement Agency — Colombia Compra Eficiente— defined the technical, conceptual and methodological guidelines for the consolidation of a public procurement and purchasing system.

Whereas, the public procurement and purchasing system is essential for the application of the good government principles and the compliance with the purposes of the State.

Whereas, the public procurement and purchasing system has a strategic function, as it allows to materialize the public policies and represents a considerable percentage of the public spending.

Whereas, it is necessary to develop Law 1150 of 2007 and Decree - Law 4170 of 2011 for the National Public Procurement Agency — Colombia Compra Eficiente — to be able to design, organize and enter into prices' master agreements, as well as to design and propose policies and tools for the adequate identification of public procurement risks and its coverage.

Whereas, the state's entities and the public servants must, through the public procurement, seek to achieve the objectives and goals of the state's entity and of the national development plan or the territorial development plans, as the case may be.

Whereas, it is necessary incorporate to the regulations the best international practices on the planning of the public procurement and purchases, to make adjustments on the sole bidders' registry, on the residual capacity, the inverted auction, the competition based on merits, the application of commercial agreements and the guarantees' regime, among other.

Whereas, it is necessary to adjust the regulation of the public procurement and purchasing system to the institutions created with the enactment of Decree - Law 4170 of 2011 and the functions thereof. Whereas, it is convenient to maintain in one single instrument the regulation applicable to the public procurement and purchasing system,



## DECREES:

### General provisions

#### TITLE I

#### Basic notions of the public procurement and purchasing system

#### CHAPTER I

##### Objectives

**ART. 1 — Objectives of the public procurement and purchasing system.** The state's entities must endeavor to accomplish the objectives of the public procurement and purchasing system defined by Colombia Compra Eficiente.

#### CHAPTER II

#### Participants of the public procurement

**ART. 2 — Participants of the public procurement.** The participants of the public procurement and purchasing system for the purposes of Decree - Law 4170 of 2011 are:

1. The state's entities that enter into contracting processes. In the terms of the law, the state's entities may associate for the joint acquisition of goods, works and services.
2. Colombia Compra Eficiente.
3. The offerors in the contracting processes.
4. The contractors.
5. The supervisors.
6. The inspectors.
7. The organizations of the civil society and the citizens when they exercise the citizens' participation in the terms of the National Constitution and of the law.

#### CHAPTER III

##### Definitions

**ART. 3 — Definitions.** The terms not defined in this decree and utilized in a frequent manner must be construed according to their natural and obvious meaning. For the interpretation of this decree, the capitalized expressions herein utilized must be construed with the meaning set forth below. The terms defined are utilized in singular and in plural indistinctly, as required by the context in which they are utilized.

Commercial agreements are international treaties in force entered into by the Colombian State, which contain rights and obligations regarding public purchasing, in which there is at least the national treatment commitment for: (i) the goods and services of a Colombian origin and (ii) the Colombian suppliers.



Prices' master agreement is the contract entered into by one or more suppliers and Colombia Compra Eficiente, or whoever takes its place, for the supply to the state's entities of goods and services of uniform technical characteristics, in the manner, term and conditions set forth in it.

Addendum is the document whereby the state's entity amends the statements of conditions.

National Goods are the goods defined as national by the National Goods' producers registry, according to the provisions of Decree 2680 of 2009 or the provisions that amend, clarify, add to or replace it.

Goods and services of uniform technical characteristics are the goods and services of common utilization with technical specifications and equal or similar performance and quality patterns, which in consequence can be grouped as homogeneous goods and services for their acquisition and that are the subject matter of sub - section (a) of the 2nd section of the 2nd article of Law 11150 of 2007.

Goods and services for the national defense and security are those acquired for those purposes by the Administrative department of the Presidency of the Republic, the entities of the defense sector, the Dirección Nacional de Inteligencia (National Intelligence Bureau), the Office of the General Prosecutor of the Nation, the INPEC, the Penitentiary and Prison Services' Unit SPC, the National Protection Unit, the National Civil State Registration Office and the Superior Judicial Council in the categories set forth in article 65 of this decree.

Residual capacity or Contracting K is the capability of an offeror to comply, in a timely and full manner, with the purpose of a work contract, without having his other contractual commitments affecting its capacity to perform the contract that is the subject of a selection process.

Prices' master agreements' catalog is the data sheet that contains: (a) the list of goods and / or services; (b) the conditions of its contracting that are covered by a prices' master agreement; and (c) the list of the contractors that are party to the prices' master agreement.

Goods and services' classifier is the United Nations' codification system to standardize products and services, known under the anagram UNSPSC.

Colombia Compra Eficiente is the National Public Procurement Agency created by Decree - Law 4170 of 2011.

Timetable is the document in which the state's entity establishes the dares, times and terms for the activities typical of the contracting process and the place in which the same must be carried out.

Documents of the process son: (a) the studies and prior documents; (b) the call notice; (c) the statements of conditions or the invitation; (d) the addendums; (e) the offer; (f) the evaluation report; (g) the contract; and any other document issued by the state's entity during the contracting process.

State's entity is each one of the entities: (a) the subject matter of the 2nd article of Law 80 of 1993; (b) the subject matter of articles 10, 14 and 24 of Law 11150 of 2007 and (c) the entities that by legal provision must apply Law 80 of 1993 and Law 11150 of 2007, or the provisions that amend, clarify, add to or replace them.



Stages of the contract are the phases in which the performance of the contract is divided, taking into account the activities typical of each one of them, which can be utilized by the state's entity for the structuring of the guarantees of the contract.

Major retail outlets are the commercial establishments that sell mass consumption goods to the general public and which have the financial conditions defined by the Superintendence of Industry and Trade.

Bid is each one of the bids that the offerors make in an auction.

Minimum margin is the minimum amount in which the offeror in an inverted auction must reduce the amount of the bid or in which it must increase the value of the bid in a disposal auction, which can be expressed in money or as a percentage of the auction's opening price.

Mipyme is the micro, small and medium enterprise according to the applicable Law in force.

Contractual period is each one of the time fractions in which the performance of the contract is divided, which can be utilized by the state's entity to structure the guarantees of the contract.

Annual acquisitions' plan is the general purchases' plan the subject matter of article 74 of Law 11474 of 2011 and the purchases' plan the subject matter of the Annual Budget Law. It is a contractual planning instrument that the state's entities must fill, publish and update in the terms of this decree.

Contracting process is the set of acts and activities, and their sequence, carried out by the state's entity from the planning until the expiration of the of quality, stability and maintenance guarantees, or the conditions of final disposal or environmental recovery of the works or goods or the expiration of the term, whichever occurs later.

Risk is an event that may generate adverse effects and of different magnitudes on the accomplishment of the objectives of the contracting process or on the performance of a contract.

RUP is the sole bidders' registry kept by the chambers of commerce and in which those interested in taking part in contracting processes must be registered.

National services are the services rendered by individuals that are either Colombian or resident in Colombia or by legal entities incorporated according to the Colombian legislation.

Secop is the public procurement electronic system the subject matter of the 3rd article of Law 11150 of 2007.

Smmlv is the minimum legal monthly salary in force.

**(Note: The Third Section of the State Council Issuing Judge Mauricio Fajardo Gómez, in Decision 2014 - 00035 of the 14th of May of 2014, ordered the provisional suspension, in its entirety, of the seventh part of this article, which contain the definition of the state's entities that could resort to the abbreviated selection process for the contracting of goods and services required for the national defense and security.)**



## CHAPTER IV

### Annual acquisitions' plan

**ART. 4 — Annual acquisitions' plan.** The state's entities must make an annual acquisitions' plan, which must contain the list of goods, works and services that they intend to acquire throughout the year. In the annual acquisitions' plan, the state's entity must point out the need and, when it knows it the good, work or service that satisfies such need, it must identify it utilizing the goods and services' classifier, and state the estimated value of the contract, the type of resources with which the state's entity will pay such good, work or service, the modality of selection of the contractor, and the approximate date in which the state's entity will start the contracting process. Colombia Compra Eficiente shall establish the guidelines and the form that must be utilized to make the annual acquisitions' plan.

**ART. 5 — There is no obligation to acquire the goods, works and services contained in the annual acquisitions' plan.** The annual acquisitions' plan does not force the state's entities to carry out the acquisition processes listed in it.

**ART. 6 — Publication of the annual acquisitions' plan.** The state's entity must publish its annual acquisitions' plan and the updates thereof on its website and in the Secop, in the manner established for such purposes by Colombia Compra Eficiente.

**ART. 7 — Update of the annual acquisitions' plan.** The state's entity must update the annual acquisitions' plan at least once during its term, in the manner and in the opportunity established for such purposes by Colombia Compra Eficiente.

The state's entity must update the annual acquisitions' plan when: (i) there are adjustments of the timetables of acquisition, amounts, modality of selection, origin of the funds; (ii) to include new works, goods and / or services; (iii) to exclude works, goods and / or services; or (iv) to amend the annual acquisitions' budget.

## CHAPTER V

### Sole bidders' registry (RUP)

**ART. 8 — Inscription, renewal, update and cancellation of the RUP.** The individuals and legal entities, domestic or foreign, domiciled in Colombia, interested in taking part in contracting processes called by the state's entities, must be registered with the RUP, with the exceptions specifically established in the law.

The person registered in the RUP must submit the information to renew its registration no later than in the fifth business day of the month of April of each year. Otherwise, the effects of the RUP cease. The person registered in the RUP may update the information registered related to its experience and legal capacity at any time.

Those registered with the RUP can ask the Chamber of Commerce to cancel their registration at any time.

**ART. 9 — Information for registration, renewal or update.** The interested party must submit to any Chamber of Commerce of the country a registration application, accompanied by the following

information. The Chamber of Commerce of the domicile of the applicant is the one responsible for the respective registration, renewal or update:

1. In the case of a natural person:

- a) Goods, works and services that it will offer to the state's entities, identified with the Goods and services' classifier in the third level;
- b) Certificates of the experience in the provision of the goods, works and services to be offered to the state's entities, which must be issued by third parties that have received such goods, works or services and must correspond to contracts performed or copies of the contracts when the interested party cannot obtain such certificate. The interested party must state in each certificate or in each copy of the contracts, the goods, works and services to which the experience that it intends to accredit corresponds, identifying them with the goods and services' classifier in the third level;
- c) If the person has the obligation to keep accounts, copy of the accounting information of the last year as demanded by the tax laws;
- d) Certificate issued by the natural person or his or her accountant, related to the business' size, according to the legal and regulatory definition.

2. If it is a legal entity:

- a) Goods, works and services to be offered to the state's entities, identified with the Goods and services' classifier in the third level;
- b) Certificate issued by the legal representative and the statutory auditor, if the legal entity has the obligation to have one, or of the auditor or accountant, evidencing that the interested party is not a member of a corporate or business group, does not control other companies and there is no situation of control over the interested party, in the terms of the Commerce Code. If the corporate or business group or the control circumstance exists, the certificate must include the identification of the members of the corporate or business group, the situation of control and the controlled and controlling parties;
- c) Financial statements of the company as well as the consolidated financial statements of the corporate or business group, when the provision applicable so demands, audited with its notes and the following annexes, signed by the legal representative and the statutory auditor, if the legal entity has the obligation to have one, or signed by the legal representative and the auditor or accountant if the legal entity does not have the obligation to have a statutory auditor:
  - i. Main accounts, detailed, of the general balance sheet.
  - ii. Main accounts of the Profit and loss statement.
  - iii. Creditor and debtor memoranda accounts.
- d) If the interested party is not old enough to have audited financial statements as of the 31st of December, it must be registered with quarterly financial statements, signed by the legal representative and the auditor or accountant, or the initial financial statements;
- e) Copy of the additional documents required by the Superintendence of Companies regarding the companies subject to its inspection, oversight or control;



- f) Certificates of the experience in the provision of the goods, works and services that it will offer to the state's entities, which must be issued by third parties that have received such goods, works or services and must correspond to contracts performed or copies of the contracts when the interested party cannot obtain such certificate. The interested party must state in each certificate or in each copy of the contracts, the goods, works and services to which the experience that it intends to accredit corresponds, identifying them with the goods and services' classifier in the third level. If the incorporation of the interested entity took place less than three (3) years before, it can accredit the experience of its shareholders, members or incorporators;
- g) Certificate issued by the legal representative and the statutory auditor, if the legal entity has the obligation to have one, or the auditor or accountant, related to the business' size, according to the legal and regulatory definition.

The branch offices of foreign companies must submit for registration the accounting and financial data of the parent company. The financial statements of the foreign companies must be submitted in agreement with the rules in force in the country in which they were issued.

The bidders whose financial year ends on a date other than the 31st of December, must update the financial information on the relevant date, without prejudice to the obligation of renewing the RUP according to the provisions of the 8th article of this decree.

**ART. 10 — Enabling Requirements contained in the RUP.** The chambers of commerce, based on the information the subject matter of the preceding article, must verify and certify the following enabling requirements:

1. Experience. The contracts entered into by the interested party for each one of the goods, works and services to be offered by it to the state's entities, identified with the goods and services' classifier in the third level and the value thereof expressed in smmlv.  
The contracts entered into by consortia, joint ventures and companies in which the interested party has, or has had, participation, for each one of the goods, works and services to be offered by it to the state's entities, identified with the goods and services' classifier in the third level and the value thereof expressed in smmlv.
2. Legal capacity. The legal capacity of the bidder to provide the goods, works, or services that it will offer to the state's entities and the capacity of the legal representative of the legal entities to enter into contracts and if required, authorizations for such purposes bearing in mind the limits to the powers of the legal representative of the interested party in respect to the amount and the type of the obligations that it can acquire on behalf of the interested party.
3. Financial capacity. The following indicators measure the financial strength of the interested party:
  - a) Liquidity Ratio: current assets divided by the current liabilities;
  - b) Indebtedness Ratio: total liabilities divided by the total assets;
  - c) Interest coverage ratio: operational profits divided by the interest expense.
4. Organizational Capacity. The following indicators measure the returns of the investments and the efficiency in the use of assets of the interested party:
  - (a) Return on Equity: operational income divided by the equity.
  - (b) Return on Assets: operational income divided by the total assets.



**ART. 11 — Function of verification of the chambers of commerce.** The chambers of commerce must verify that the information of the registration, renewal or update form agrees with the information contained in the documents listed in the 9th article of this decree and proceed to the registration. The chambers of commerce can utilize the information of the records kept by them to make such verification. The reversal appeal can be brought against the registration, in the terms of section 6.3 of the 6th article of Law 11150 of 2007.

The proceedings of the contesting of registrations in the RUP must be carried out according to the provisions of section 6.3 of the 6th article of Law 11150 of 2007.

**ART. 12 — Form.** The Superintendence of Industry and Trade will authorize the RUP application of registration form as well as the graphic scheme of the certificate submitted, for such purposes, by the chambers of commerce.

**ART. 13 — RUP Certificate.** The RUP certificate must contain: (a) the goods, works and services for which the offeror is registered according to the goods and services' classifier; (b) the requirements and indicators the subject matter of article 10 of this decree; (c) the information related to contracts, fines, sanctions and disqualifications; and (d) the historic data of experience that the bidder has registered in the RUP. The chambers of commerce will issue the certificate of the RUP upon request of anyone interested. The state's entities will have access on line and free of charge to the information registered in the RUP.

**ART. 14 — Information of fines, sanctions, disqualifications and contractual activity.** The state's entities must send every month to the chambers of commerce of their domicile a copy of the firm administrative decisions whereby they imposed fines and sanctions and of the disqualifications resulting from the contracts that it has entered into, as well as of the information of the contracting processes in the terms of the 6th article of Law 11150 of 2007. For such purposes the chambers of commerce may establish electronic mechanisms to receive the aforementioned data. The registration of the sanctions and disqualifications must remain in the RUP certificate for the term of the sanction or of the disqualification. The information related to fines must remain in the RUP certificate for one year as from the date of publication thereof.

The chambers of commerce must have a mechanism for their inter – operation with the Secop for the registration of the information the subject matter of this article.

## CHAPTER VI

### Analysis of the economic sector and of the offerors by the state's entities

**ART. 15 — Analysis duty of the State's entities.** The state's entity must perform, during the planning stage, the analysis necessary to know the sector related to the purpose of the contracting process from a legal, commercial, financial, organizational, technical, and risk analysis perspective. The state's entity must leave evidence this analysis in the documents of the process.

**ART. 16 — Determination of the enabling requirements.** The state's entity must determine the enabling requirements in the statements of conditions or in the invitation, taking into account: (a) the Risk of the contracting process; (b) the value of the contract the subject of the contracting process; (c) the analysis of the respective economic sector; and (d) the deep knowledge of the possible offerors from a commercial perspective. The state's entity must not be limited to the mechanic application of financial formulas to verify the enabling requirements.



**ART. 17 — Evaluation of the risk.** The state's entity must assess the risk that the contracting process poses for the compliance with its goals and objectives, according to the manuals and guidelines issued for such purposes by Colombia Compra Eficiente.

**ART. 18 — (Amended). \* Residual capacity.** The party interested in entering into works' contracts with state's entities must accredit its residual capacity or Contracting K for which it must furnish the following documents:

1. The list of the contracts in execution entered into with state's entities as well as with private entities to do civil works, as well as the amount and term of such contracts, including the concession contracts of and the works' contracts signed with concessionaires.
2. The list of the contracts in execution, entered into by companies by companies, consortia or joint ventures, in which the bidder has a share, with state's entities as well as with private entities to do civil works, as well as the amount and term of such contracts, including the concession contracts of and the works' contracts signed with concessionaires.
3. The audited financial statements of the last two (2) years, signed by the interested party or its legal representative and the statutory auditor, if it has the obligation to have one, or the auditor or accountant if it does not have the obligation to have statutory auditor, which must include the Income statement and the general balance sheet. If the interested party has been incorporated less than two (2) years before, the financial statements must cover the term from the date of its incorporation up to the monthly cutoff date immediately before to the filing thereof.

The state's entity must figure out the residual capacity required for each year of execution of the contract the subject of the contracting process, according to the methodology defined by Colombia Compra Eficiente. For these purposes, it must take into account the operational profit before interest, taxes, depreciation and amortization, the investments in fixed assets and the investments in net operational working capital. Also, the state's entity must consider the balances of the contracts that must be exercised during the year of calculation of the residual capacity.

The state's entity must determine in the statements of conditions the residual capacity for each contracting process of public works, taking into account the type of work, the amount and the term of the contract and its payments' schedule, according to the methodology defined by Colombia Compra Eficiente.

The manual that contains the methodology for the calculation of the residual capacity must also contain the manner in which the bidders must accredit the information the subject matter of sections 1 and 2 of this article and endure that it is true, or alternatively utilize the relevant ratios to forecast the income and expenditures derived of the works' contracts in execution.

**\*(Note: Amended by Decree 791 of 2014 article 1° of the National Planning Department)**

## CHAPTER VII

### Publicity

**ART. 19 — Publicity in the Secop.** The state's entity has the obligation to publish in the Secop the documents of the process and the administrative decisions of the contracting process, within a term



of the three (3) days after the issuance thereof. The offer that must be published is that of the awardee of the contracting process. The documents of the operations that are performed in products' exchanges do not have to be published in the Secop.

The state's entity has the obligation to publish, in a timely manner, the call notice or the invitation in minimum amount contracting processes and the project of statements of conditions in the Secop for the parties interested in the contracting process to be able to make observations or request clarifications within the term established for such purposes in article 23 of this decree.

## TITLE II

### Structure and documents of the contracting process

## CHAPTER I

### Planning

**ART. 20 — Prior studies and documents.** The prior studies and documents are the support to make the project of statements, the statements of conditions, and the contract. They must remain available to the public throughout the contracting process and they must contain the following the elements, on top of those stated for each modality of selection:

1. The description of the need that the state's entity intends to satisfy with the contracting process.
2. The object to be contracted, with its specifications, the authorizations, permits and licenses required for its execution, and when the contract includes design and construction, the technical documents to carry out the project.
3. The modality of selection of the contractor and its justification, including the legal grounds.
4. The estimated amount of the contract and the justification thereof. When the amount of the contract is determined by unit prices, the state's entity must include the manner in which it was calculated and support its calculations or budget on the estimation thereof. The state's entity must not publish the variables utilized to calculate the estimated amount of the contract when the modality of selection of the contractor is a competition based on merits. If the contract is a concession one, the state's entity must not publish the financial model utilized to structure it.
5. The criteria to choose the most favorable offer.
6. The analysis of risk and the manner to mitigate it.
7. The guarantees that the state's entity intends to request in the contracting process.
8. The indication of whether or not the contracting process is covered by a commercial agreement.

This article is not applicable to minimum amount contracting.

**ART. 21 — Call notice.** The call notice to take part in a contracting process must contain the following information, in addition to what was established for each modality of selection:

1. The name and address of the state's entity.
2. The address, the electronic mail and the phone number in which the state's entity will serve the parties interested in the contracting process, and the address and the electronic mail where the bidders must deliver the documents pursuant to the contracting process.
3. The purpose of the contract to be entered into, identifying the quantities to be acquired.
4. The modality of selection of the contractor.
5. The estimated term of the contract.
6. The deadline by which the interested parties must submit their offer and the place and manner of presentation thereof.
7. The estimated amount of the contract and the express representation that the state's entity has on the budgetary availability required.
8. Mention of whether or not the procurement process is covered by a commercial agreement.
9. Mention of whether or not the calling is susceptible of being limited to Mipyme.
10. Enumeration and brief description of the conditions to take part in the contracting process.
11. State whether or not the prequalification is possible in the contracting process.
12. The timetable.
13. The manner in which the interested parties can consult the documents of the process.

In the contracting processes carried out under the selection modalities of minimum amount and direct contracting, it is not necessary to make and publish the call notice in the Secop.

**ART. 22 — Statements of conditions.** The statements of conditions must at least contain the following information:

1. The detailed and complete technical description of the good or service the purpose of the contract, identified with the fourth level of the goods and services' classifier, of if possible or otherwise, with the third level thereof.
2. The modality of the selection process and its justification.
3. The criteria of selection, including the tie - breaker factors and the incentives, when such is the case.
4. The cost and / or quality conditions that the state's entity must take into account for the objective selection, according to the modality of selection of the contractor.
5. The rules applicable to the presentation of the offers, to their evaluation and to the awarding of the contract.



6. The causes that lead to the rejection of an offer.
7. The amount of the contract, the term, the timetable of payments and the determination of whether or not there must be down payment and, if such is the case, state the amount thereof, which must take into account the returns that it may generate.
8. The risks associated to the contract, the manner to mitigate them and the allocation of the risk between the contracting parties.
9. The guarantees required in the contracting process and the conditions thereof.
10. The mention of whether or not the state's entity and the contract the subject of the statements of conditions are covered by a commercial agreement.
11. The terms, conditions and draft of the contract.
12. The terms of the supervision and / or of the inspectors of the contract.
13. The term within which the state's entity can issue addendums.
14. The timetable.

**ART. 23 — Observations to the project of statements of conditions.** The interested parties are entitled to make comments to the project of statements of conditions as from the date of publication thereof: (a) for a term of ten (10) business days in the public tender; and (b) for a term of five (5) business days in the abbreviated selection and the competition based on merits.

**ART. 24 — Administrative decision of opening of the selection process.** The state's entity must order the opening of the selection process, in an administrative decision of a general nature, without prejudice to the special provisions for the selection modalities.

The administrative decision the subject matter of this article must establish:

1. The purpose of the contracting process to be carried out.
2. The modality of selection that corresponds to the contracting.
3. The timetable.
4. The physical or electronic place in which it is possible to consult and take away the statements of conditions and the prior studies and documents.
5. The calling for the citizens' oversight.
6. The certificate of budgetary availability, pursuant to the relevant organic legislation.
7. All other issues deemed as pertinent according to each one of the selection modalities.



## CHAPTER II

### Selection

**ART. 25 — Amendment of the statements of conditions.** The state's entity can amend the statements of conditions through addendums issued before the expiration of the term to submit offers. The state's entity may issue addendums to amend the timetable after the expiration of the term to submit the offers but before that for the awarding of the contract.

The state's entity must publish the addendums on business days, between 7:00 a.m. and 7:00 p.m., no later than one business day before the expiration of the term to make offers at the time determined as deadline to do so, excepting in the public tender because, according to the law, the publication must be made three (3) days in advance.

**ART. 26 — Most favorable offer.** The state's entity must determine the most favorable offer taking into account the rules applicable to each modality for the selection of the contractor.

Regarding the tender and the abbreviated selection of small amount, the state's entity must determine the most favorable offer taking into account: (a) the weighing of the elements of quality and price supported on scores or formulae; or (b) the weighing of the elements of quality and price that represent the better cost - benefit ratio. If the state's entity decides to end the offer according to sub - section (b) above, it must establish in the statements of conditions:

1. The minimum technical and economical conditions of the offer.
2. The additional technical conditions that represent quality or operation advantages, such as the use of technology or materials that generate a greater efficiency, returns or duration of the good, work or service.
3. The additional economic conditions that represent advantages in terms of economy, efficiency and efficacy, that are susceptible to be appraised in money such as, for example, the terms of payment, discounts for the awarding of several lots, discounts for variations of delivery programs, greater guarantee of the good or service versus the minimum one required, economic impact of the existing conditions of the state's entity related to the object to be contracted, a higher assumption of risks, additional services or goods and which represent a higher degree of satisfaction for the entity, among other things.
4. The amount in money that the state's entity allocates to each additional technical or economic offer to allow the weighing of the offers submitted.

The state's entity must calculate the cost - benefit ratio of each offer deducting from the total price offered the monetary values assigned to each one of the additional technical or economic conditions offered. The best cost - benefit ratio for the state's entity is that of the offer that, once the foregoing methodology has been applied, has the lowest results.

The state's entity must award to the offeror who submitted the offer with the best cost - benefit ratio and enter into the contract for the total price offered.

**ART. 27 — Evaluation committee.** The state's entity may appoint an evaluation committee made up by public servants or by private parties retained for such purposes in order to evaluate the offers

and the expressions of interest for each contracting process per tender, abbreviated selection and competition based on merits. The evaluation committee must discharge its duties in an objective manner, exclusively abiding by the rules contained in the statements of conditions. The advisory nature of the committee does not release it from the responsibility of the discharging of the duty entrusted. In the event that the state's entity does not adopt the recommendation made by the evaluation committee, it must justify its decision.

The members of the evaluation committee are subject to the legal disqualifications and incompatibilities regime, as well as to conflict of interest.

The verification and the evaluation of the offers for the minimum amount will be carried out by whoever is appointed by the expenditure authority and a plural committee is not required.

**ART. 28 — Offer of an artificially low amount.** If according to the information obtained by the state's entity in its analysis duty the subject matter of article 15 of this decree, the amount of an offer seems to be artificially low, the state's entity must ask the offeror to explain the reasons that support the amount offered. Once the explanations have been evaluated, the evaluation committee the subject matter of the preceding anterior, or whoever makes the evaluation of the offers, must recommend rejecting the offer or continuing with the analysis thereof in the evaluation of the offers.

When the amount of the offer regarding which the state's entity had doubts regarding the value responds to objective circumstances of the offeror and of its offer that do not jeopardize the compliance with the contract if the same is awarded to that offer, the state's entity must continue with its analysis in the process of evaluation of offers.

In the inverted auction, this provision is applicable on the price obtained at the end thereof.

**ART. 29 — Disqualifications because of the presentation of other offers.** For the purposes of establishing the offeror that must be disqualified when in one same contracting process there are offerors in the situation described by sub - sections (g) and (h) of section 1 of the 8th article of Law 80 of 1993 and to be able to establish the first offer in time, the state's entity must leave evidence of the date and time in which the offers were received, stating the name or corporate name of the offerors and their legal representatives.

**ART. 30 — Awarding with single offer.** The state's entity may award the contract when only one offer has been presented, provided that it meets the enabling requirements established and satisfies the requirements of the statements of conditions, without prejudice to the special provisions established in the Law and this decree for the inverted auction, the competition based on merits and the particular rules for the processes with calling limited to the Mipyme.

**ART. 31 — The celebration of contracts pursuant to trust funds or trust agreements.** The state's entity cannot delegate on trust companies the awarding of the contracts entered into by them under trust funds or a public trust fund but they can entrust to the trust company the execution of such contracts and the completion of all the proceedings inherent to the contracting process.

**ART. 32 — Disqualifications of the open joint stock companies.** In the selection stage, the state's entity must take into account the disqualifications and incompatibilities and conflicts of interest regime set forth in the law, for which it must bear in mind that the open joint stock companies are those registered in the national securities' and issuers' registry, unless the competent authority orders any thing contrary or supplemental thereto.



**ART. 33 — Tie - breaker factors.** In case of a tie in the total score of two or more offers, the state's entity will choose the offeror that has the highest score in the first of the selection and qualification factors established in the statements of conditions of the contracting process. If the tie persists, it will choose the offeror that has the highest score in the second of the selection and qualification factors established in the statements of conditions of the contracting process and so on and so forth until exhausting all the selection and qualification factors established in the statements of conditions.

If the tie persists, the state's entity must enforce the following rules in a successive and exclusive manner to select the successful offeror, respecting the commitments acquired by commercial agreements:

1. Prefer the offer of national goods or services versus the offer of foreign goods or services.
2. Prefer the offers made by a domestic Mipyme.
3. Prefer the offer made by a consortium, joint venture or promise of future company provided that:  
(a) is made up by at least one domestic Mipyme that has a share of at least twenty five per cent (25%); (b) the Mipyme contributes at least the twenty five per cent (25%) of the experience accredited in the offer; and (c) neither the Mipyme, nor its shareholders, members or legal representatives are employees, members or shareholders of the members of the consortium, joint venture or promise of future company.
4. Prefer the bid submitted by the offeror that accredits in the conditions established in the Law that at least ten per cent (10%) of its staff in the payroll is in a disabled condition according to Law 1361 of 1997. If the offer is made by a consortium, joint venture or promise of future company, the member of the offeror that accredits that ten per cent (10%) of its staff in the payroll is in a disabled condition in the terms of this section, must have a share of at least twenty five per cent (25%) in the consortium, joint venture or promise of future company and contribute a minimum of twenty five per cent (25%) of the experience accredited in the offer.
5. Utilize a random method to select the offeror, method that must have been foreseen in the statements of conditions of the contracting process.

## CHAPTER III

### Contracting

**ART. 34 — The of execution and delivery, performance and payment requirements.** In the timetable, the state's entity must determine the term for the execution of the contract, for the budgetary registration, the publication in the Secop and for the compliance with the requirements established in the statement of conditions for the execution and delivery, the performance and the payment of the contract.

## CHAPTER IV

### Performance

**ART. 35 — Stand - alone trust fund for the management of advanced payments.** In the cases established in the law, the contractor must enter into a commercial trust agreement to create a stand



- alone trust fund, with a trust company authorized for such purposes by the Financial Superintendence, to which the state's entity must give the amount of the advanced payment.

The funds handed over by the state's entity as advanced payment are no longer part of the equity thereof to become part of the stand - alone trust fund. In consequence, the funds of the stand - alone trust fund and its returns son autonomous and are managed according to the commercial trust agreement.

In the statements of conditions, the state's entity must determine the terms and conditions of the management of the advanced payment through the stand - alone trust fund.

In this case, the trust company must pay to the suppliers, based on the instructions that it receives from the contractor, which must have been authorized by the supervisor or by the inspector, provided that such payments correspond to the items set forth in the plan for the utilization or investment of the advanced payment.

**ART. 36 — The determination of the late payment charges.** To determine the updated historic amount the subject matter of article 4, section 8 of Law 80 of 1993, for each year of default the increase of the consumer price index between the 1st of January and the 31 of December of the previous year will be applied to the amount due. In the event that the time lapsed is less than one year, or in the case of fractions of a year, the update will be made as a proportion of the days lapsed.

**ART. 37 — Obligations after the winding up.** Upon the expiration of the terms of the quality, stability and maintenance guarantees, or the conditions of final disposal or environmental recovery of the works or goods, the state's entity must certify the closure of the dossier of the contracting process.

## Special provisions

### TITLE I

#### Selection modalities

### CHAPTER I

#### Public tender

**ART. 38 — Presentation of the offer in a dynamic manner through inverted auction in the public tender processes.** The state's entities can utilize the mechanism of inverted auction for the dynamic formation of the offers in the tender. In this case, the state's entity must determine in the statements of conditions the technical and economic variables regarding which the offerors can bid.

On the date determined in the statements of conditions, the offerors must submit the documents that accredit the enabling requirements that the state's entity demands. In the case of a partially dynamic formation of the offer, the documents established must be accompanied by the component of the offer that is not the subject of dynamic formation.

The state's entity, within the term established in the statements of conditions, must verify the compliance with the enabling requirements and with the additional conditions if such is the case, in order to determine the offerors that may remain in the selection process. The inverted auction for the



dynamic formation of the offer must be made with the enabled offerors, on the date and time determined in the statements of conditions.

In the auction, the offerors must make their initial offer with the dynamic variables, in agreement with the statements of conditions, which can be improved with the bids up to the conformation of the final offer.

It will be taken as final the initial offer made by the offeror that does not make bids in the auction.

Under no circumstances the price will be the sole variable subject to dynamic formation.

The electronic tool used for the auction must allow that the offeror knows its situation in respect of the other competitors and only in relation to the calculation of the lower cost assessed. If the auction refers to some variables only, those that do not admit improvement must have been previously evaluated and fed into the system, so it can make the automatic calculation of the lower cost evaluated for any bid.

The proceedings of the auction will be recorded in minutes, which will include all statements that have to be on record, as the case may be.

**ART. 39 — Hearings in the tender.** In the tender selection stage, the following hearings are mandatory: a) allocation of risks, and b) awarding. If upon request of an interested party it is necessary to carry out a hearing to clarify the contents and scope of the statements of conditions, this subject will be dealt with in the risks' allocation hearing.

In the risks' allocation hearing, the state's entity must submit the risks analysis made and make a final allocation of risks.

The state's entity must hold the awarding hearing on the date and time established in the timetable, which will be made according to the rules established for such purposes in them and the following considerations:

1. In the hearing, the offerors may make pronouncements about the answers given by the state's entity to the observations made about the evaluation report, which is not a new opportunity to improve or amend the offer. If there are pronouncements that in the opinion of the state's entity requires additional analysis and their resolution may have incidence on the sense of the decision to be adopted, the hearing may be suspended during the term necessary for the verification of the issued discussed and the evidencing of what was argued.
2. The state's entity must grant the use of the floor for one single time to any offeror that so requests, to answer to the observations made by the persons that take part in the hearing about the evaluation of its offer.
3. Any intervention must be made by the person or the persons previously appointed by the offeror, and it shall be limited to the maximum duration that the state's entity has determined beforehand.
4. The state's entity may dispense with the reading of the draft of the administrative decision of awarding provided that it has published it in the Secop beforehand.



5. Once the interventions of those present in the hearing have ended, the relevant decision will be made.

## CHAPTER II

### Abbreviated selection

#### Common provisions for the abbreviated selection for the acquisition of goods and services of uniform technical characteristics

**ART. 40 — Statements of conditions.** In the statements of conditions to procure goods and services of uniform technical characteristics, the state's entity must state:

1. The technical data sheet of the good or service, which must include: a) the classification of the good or service according to the goods and services' classifier; b) the additional identification required; c) the measurement unit; d) the minimum quality, and e) the minimum performance patterns.
2. If the price of the good or service is regulated, the variable regarding which the evaluation of the offers is made.
3. To define the contents of each one of the parts or lots, if the intention is to make the acquisition by parts.

#### Abbreviated selection for the acquisition of goods and services of uniform technical characteristics by inverted auction

**ART. 41 — Procedure for the inverted auction.** Besides the general rules set forth in the law and in this decree, the following rules are applicable to the inverted auction:

1. The statements of conditions must state: a) the date and time in which the auction will start; b) the periodicity of the bids; and c) the minimum margin to improve the offer during the inverted auction.
2. The offer must contain two parts, the first one in which the interested party accredits its capacity to participate in the contracting process and accredits the compliance with the technical data sheet; and the second part must contain the initial price proposed by the offeror.
3. The state's entity must publish an offerors' qualification report, which must state whether or not the goods or services offered by the interested party meet the technical data sheet and whether or not the offeror is duly qualified.
4. There are inverted auction whenever there are at least two qualified offerors the goods or services of which meet the technical data sheet.
5. If only one offeror appears in the contracting process, the goods or services of which meet the technical data sheet and is qualified, the state's entity can award the contract to the sole offeror if the value of the offer is equal to or lower than the budgetary availability for the contract, in which case the inverted auction will not take place.



6. The auction must start with the lowest price given by the offerors and in consequence, the only valid bids will be those made during the inverted auction in which the offer is improved by at least the minimum margin established.
7. If the offerors does not make bids during the auction, the state's entity must award the contract to the offeror that has submitted the lowest initial price.
8. At the end of the presentation of each bid, the state's entity must report the amount of the lower bid.
9. If at the end of the inverted auction there is a tie, the state's entity must select the offeror that submitted the lowest initial price. In case that the tie persists, the state's entity must apply the rules of sections 1 to 5 of article 33 of this decree.

**ART. 42 — Information of the participants in the inverted auction.** The state's entity must structure the inverted auction in a way that before the awarding, the participants in the auction do not identify the offers and the bids with the offeror that has submitted them.

**ART. 43 — Termination of the auction and awarding.** The auction ends when the offerors do not make additional bids during a period for the submission of bids. The state's entity must award the contract to the offeror that made the lowest bid. In the act of awarding, the state's entity will include the name of the offerors and the price of the last bid made by each one of them.

**ART. 44 — Electronic or on-site inverted auction.** The state's entity may decide whether it holds the inverted auction in an actual meeting or by electronic means.

If the state's entity decides to hold the auction in an electronic manner, it must establish in the statements of conditions the system that it will utilize for the inverted auction and the security mechanisms for the exchange of data messages.

**ART. 45 — Technical failures during the electronic inverted auction.** If during an electronic inverted auction technical failures occur that prevent the offerors from making their bids, the auction must be suspended and, once the technical failure has been fixed, the state's entity must resume the auction.

If for reasons attributable to the offeror or to its IT and telecommunications solutions' provider during the electronic inverted auction the connection with the system is lost, the auction shall continue and the state's entity understands that the supplier who loses its connection has desisted from taking part in it.

**Abbreviated selection for the acquisition of goods and services of uniform technical characteristics by catalog shopping derived from the celebration of prices' master agreements**

**ART. 46 — Appropriateness of the prices' master agreement.** The state's entities of the executive branch of the public power of the national level that have the obligation to apply Law 80 of 1993 and Law 11150 of 2007, or the provisions that amend, clarify, add to or replace them, have the obligation to acquire goods and services of uniform technical characteristics through the prices' master agreements in force.



The territorial entities, the autonomous bodies and those that belong to the legislative and judicial branch do not have the obligation to acquire goods and services of uniform technical characteristics through the prices' master agreements, but have the power to do so.

**ART. 47 — Identification of goods and services the subject of a prices' master agreement.**

Colombia Compra Eficiente, or whoever takes its place, must carry out, in a periodic manner, contracting processes to enter into prices' master agreements, taking into account the goods and services of uniform technical characteristics contained in the annual acquisition planes of the state's entities and the information available from the public procurement and purchasing system.

The state's entities may request from Colombia Compra Eficiente a prices' master agreement for a specific good or service. Colombia Compra Eficiente must study the application, review its pertinence and define the opportunity to start the contracting process for the prices' master agreement requested.

**ART. 48 — Utilization of the prices' master agreement.** Colombia Compra Eficiente must publish the catalog for prices' master agreements, and the state's entity in the contracting process' planning stage has the obligation to verify whether or not there is a prices' master agreement in force with which the state's entity may satisfy the identified requirement.

If the catalog for prices' master agreements contains the good or service required, the state's entity the subject matter of part 1 of article 46 of this decree shall have the obligation to enter into the prices' master agreement, in the manner established by Colombia Compra Eficiente, and afterwards it can place the relevant purchase order in the terms established in the prices' master agreement. The state's entities must not demand the guarantees the subject matter of title III of the special provisions in the purchase orders derived from the prices' master agreements, unless the respective prices' master agreement states otherwise.

**ART. 49 — Contracting process for a prices' master agreement.** Colombia Compra Eficiente must design and organize the contracting process for the prices' master agreements by public tender and enter into the prices' master agreements.

The prices' master agreement must establish, among other things, the manner in to: a) evaluate the compliance with the obligations in the charge of the suppliers and of the buyers; b) proceed in the case of noncompliance of the purchase orders; and c) act regarding the claims regarding the quality and opportunity of the performance.

Abbreviated selection for the acquisition of goods and services of uniform technical characteristics in products' exchanges

**ART. 50 — Applicable regime.** Besides the provisions of Decree 2555 of 2010 and the provisions that amend, clarify, add to or replace it, as well as the internal regulations of the products' exchanges, the following provisions are applicable to the acquisition of goods and services of uniform technical characteristics in products' exchanges.

**ART. 51 — Planning of an acquisition in the products' exchange.** The state's entity must study, compare and identify the advantages of utilizing the products' exchange for the respective acquisition, versus the inverted auction, the prices' master agreement or the promotion of a new prices' master agreement for such goods or services, including the analysis of the selection process of the broker, the costs associated to the selection, the amount of the commission and of the guarantees.

The aforementioned study must show the manner in which the state's entity ensures the principles and objectives of the public procurement and purchasing system.

**ART. 52 — Requirements to act as broker of state's entity.** The state's entity can demand from the brokers interested in taking part in the selection process through the products' exchanges, the compliance with enabling requirements additional to their capacity as such, provided that the same are adequate and proportional to the object to be contracted and to its value.

**ART. 53 — Selection of the broker.** The state's entity must select the broker according to the internal procedure applicable in the products' exchange, which must be competitive. The state's entity must publish the contract entered into with the broker chosen and its amendments, in the Secop.

**ART. 54 — Budgetary availability.** To enter into the brokerage agreement, the state's entity must accredit that it has the budgetary availability for the brokerage agreement, for the operation that the broker carries out on its behalf in the products' exchange, for the guarantees and the other payments that it must make as a consequence of the acquisition in products' exchange, according to the rules of the exchange in which the state's entity makes the negotiation.

**ART. 55 — List of goods and services of uniform technical characteristics.** The products' exchanges must standardize, typify, make and update a list of the goods and services of uniform technical characteristics susceptible of being acquired by the state's entities, in such a way that only those that are included in the list can be acquired through the relevant exchange.

The products' exchanges must keep this list available for the state's entities and for the general public in their offices and in the respective website, without prejudice to any other means of divulgation.

**ART. 56 — Sole guarantee in favor of the state's entity.** As requirement for the performance of the brokerage agreement, the broker chosen must give to the relevant principal state's entity that uses its services a sole performance guarantee in respect to the value of the commission that the state's entity, will pay to the broker for its services.

**ART. 57 — Performance guarantees in favor of the clearance house of the products' exchange.** The state's entity and the principal seller must give to the clearance house of the products' exchange the guarantees determined by the rules to guarantee the compliance of the negotiations whereby the state's entity acquires goods and services of uniform technical characteristics.

The state's entities may demand from the principal seller guarantees additional to those set forth in this article, provided that the same are adequate and proportional to the object to be contracted and to its value.

**ART. 58 — Supervision of the compliance with the operation.** The state's entities must appoint a supervisor of the execution of the operations made on their behalf in the products' exchanges and of the brokerage agreement. If the state's entity finds inconsistencies in the execution, it must inform such situation to the exchange, so it can examine and adopt the measures required to settle the difference according to its regulations and, if such is the case, to give notice of the noncompliance to its clearance house.



### Small amount contracting

**ART. 59 — Procedure for the abbreviated selection of small amount.** Besides the general rules established in this decree, the following rules are applicable to the abbreviated selection of small amount:

1. In a term of no more than three (3) business days as from the date of opening of the contracting process, the interested parties must state their intention of taking part, through the mechanism established for such purposes in the statements of conditions.
2. If the state's entity receives more than ten (10) expressions of interest it can carry on with the process or make a draw to select a maximum of ten (10) interested parties with which it will continue the contracting process. The state's entity must establish in the statements of conditions whether or not the draw is applicable and the manner in which it will do it.
3. If a draw can take place, the term for the submission of the offers will start one business day after the date in which the state's entity informs to the interested parties the results of the draw.
4. The state's entity must publish the offers' evaluation report in a term three (3) business days.

### Other abbreviated selection processes

**ART. 60 — Contracts for the provision of health services.** The state's entity that requires the provision of health services must utilize the small amount abbreviated selection process. The individuals or legal entities that provide these services must be registered in the registry kept for those purposes by the Ministry of Health and Protection Social or whoever takes its place.

**ART. 61 — Contracting the public tender process of which has been declared deserted.** The state's entity that declared a tender deserted may carry out the respective contracting process applying the provisions of the small amount abbreviated selection process, for which it must dispense with: a) receiving expressions of interest, and b) making the draw of offerors. In this case, the state's entity must issue the act of opening of the contracting process within four (4) months after the date in which it was declared deserted.

**ART. 62 — Acquisition of products of agricultural origin or destination.** The state's entity must apply the process of acquisition in products' exchange the subject matter of articles 50 to 58 of this decree to acquire products of agricultural origin or destination offered in the products' exchanges. The state's entity may acquire such products outside the exchange if it does so in better conditions. In this case, the state's entity must express this situation in the process' documents.

**ART. 63 — Contracting by industrial and commercial enterprises of the State.** The industrial and commercial enterprises of the State and the companies partially owned by the state, their affiliates and the enterprises in which the State owns more than fifty per cent (50%) of the equity that are not in a situation of competition, must utilize the small amount abbreviated selection process for the contracts the purpose of which is their commercial and industrial activity, excepting for the public works' contracts, consultancy, provision of services, concession, trust agreement and public trust fund for which the respective modality will be applicable.

**ART. 64 — Contracting by state's entities dedicated to the protection of human rights and population with a high level of vulnerability.** The state's entities in charge of the execution of the

programs the subject matter of sub - section h) of section 2 of article 2 of Law 11150 of 2007 must apply the procedure established for the abbreviated selection of small amount.

**ART. 65 — Abbreviated selection for the acquisition of goods and services for the national defense and security.** The state's entities that acquire goods and services for the national defense and security must utilize the small amount abbreviated selection process for the following categories:

1. Explosive and pyrotechnical materials, raw materials for their manufacture and accessories for their use.
2. Parachutes and jumping equipment for air – transported units, including the equipment and parts necessary for their maintenance.
3. Diving and submarine blasting equipment, its spare parts and accessories.
4. The elements necessary to maintain the order and the security in the national incarceration establishments of the Colombian penitentiary and jail system, such as safety systems, weapons and equipment including X – Ray machines, metal detectors, handheld metal detectors, night vision devices among other.
5. The goods and services required by the National Civil State Registration Office to carry out the process of modernization of the identification documents, citizens' identification, those required by the state's entities to access the information systems of the National Civil State Registration Office and those required for the popular elections.
6. The catering for the personal of the military forces and of the National Police, which comprises the campaign rations, the supply of the units in operations, in of instruction and training areas, headquarters, military garrisons, military and police training schools and any kind of military or police facility; including their acquisition, supply, transportation, storage, handling and transformation, by any economic, technical and / or legal means.
7. Elements necessary for the provision of uniforms or individual or collective equipment of the public force.
8. Medicines and medical – surgical inputs of a limited therapeutic margin, for high – cost diseases.
9. The provision of medical assistance and priority services.
10. Equipment of military hospitals and health establishments of the military forces and National Police health systems, campaign health equipment and campaign military equipment a destined to the national defense and of the exclusive use of the military forces.
11. The design, acquisition, construction, adaptation, installation and maintenance of systems for the treatment and supply of drinking water, waste water plants and of solid waste ones required by the military forces and the National Police.
12. The goods and services which are acquired against the fixed items or similar of the military units and against the budgetary items assigned in the items of military and police operations' and elections' support.



13. Acquisition, adaptation of the facilities of the judicial branch, of the Attorney General's Office and exceptionally of the National Protection Unit that may be required for security reason, because of risks previously qualified by the competent authority.
14. Acquisition of vehicles to be armored, spare parts for motor vehicles, security equipment, motorcycles, communications' systems, X – Ray equipment for the detection of weapons, of plastic explosives, of gases and of mail, for the safety and protection of the servants and former servants of the judicial branch of the State.
15. The maintenance of the goods and services determined in this article, as well as the consultancies that are required for the acquisition or maintenance thereof, including the inspections required for the performance of the respective contracts.
16. Goods and services directly required for the implementation and execution of the emergency and security integrated system (SIES) and its subsystems.
17. The contracts entered into by the Office of the General Prosecutor of the Nation or the Superior Judicial Council that must be kept in reserve.
18. The contracts entered into by the National Roads' Institute (Invías) for the development of the road security program, provided that the acquisition of goods, works or services is made with funds managed by it with specific destination for the defense sector.

When the goods and services for the national defense and security are goods and services of uniform technical characteristics, the state's entities must utilize the inverted auction, the prices' master agreement or the products' exchange.

**(Note: The Third Section of the State Council, Issuing Judge Mauricio Fajardo Gómez, in Decision 2014 - 00035 of May 14, 2014, ordered the provisional suspension of this article, whereby a list of the contracts and / or the goods and services required for the national defense and security in respect of which the causal of abbreviated selection was to be operational was made.)**

**ART. 65A — (Note: Added by the Decree 1965 of 2014 article 1° of the National Planning Department)**

## CHAPTER III

### Competition based on merits

**ART. 66 — Appropriateness of the competition based on merits.** The state's entities must select their contractors through the competition based on merits for the provision of consultancy services the subject matter of section 2 of article 32 of Law 80 of 1993 and for the architectural projects.

The procedure for the selection of architectural projects is the one established by Decree 2326 of 1995, or the provisions that amend, clarify, add to or replace it.

**ART. 67 — Proceedings of the competition based on merits.** Besides the general rules set forth in the Law and in this decree, the following rules are applicable to the open or with prequalification competition based on merits:



1. The state's entity in the statements of conditions must state the manner in which it will grade, among other, the following criteria: a) the experience of the interested party and of the work team, and b) the academic training and the technical and scientific publications of the work team.
2. The state's entity must publish, throughout three (3) business days the evaluation report, which must contain the technical qualification and the eligibility order.
3. The state's entity must review the economic offer and it must verify that it falls within the range of the estimated amount set forth in the prior documents and studies and of the budget assigned to the contract.
4. The state's entity must check with the offeror ranked in the first place of eligibility the coherence and consistency between: i) the need identified by the state's entity and the scope of the offer; ii) the consultancy offered and the price offered, and iii) the price offered and the budgetary availability of the respective contracting process. If the state's entity and the offeror reach an agreement about the scope and the value of the contract, they will certify it and they will sign the contract.
5. If the state's entity and the offeror ranked in the first place of eligibility do not reach an agreement, they will certify this fact and the state's entity will review with the offeror ranked in the second place of eligibility the aspects the subject matter of the preceding section. If the state's entity and the offeror each an agreement, they will certify this fact and sign the contract.
6. If the state's entity and the offeror ranked in the second place of eligibility do not reach an agreement, the state's entity must declare the contracting process deserted.

**ART. 68 — Prequalification for the competition based on merits.** In the stage of planning of the competition based on merits' planning stage, the state's entity can make a prequalification of the offerors when, taking into account the complexity of the consultancy it considers it as pertinent.

**ART. 69 — Call notice for the prequalification in the competition based on merits.** If the state's entity decides to carry out the competition based on merits with prequalification it must summon all the interested parties by means of a notice published in the Secop which must have the following information:

1. The mention of the contracting process for which the prequalification is being made.
2. The manner in which the interested parties must present their expression of interest and accredit the enabling requirements of experience, formation, publications and the capacity of organization of the interested party and its work team.
3. The criteria that the state's entity will take into account to make up the prequalification list, including the mention of whether or not there is a maximum number of prequalified parties.
4. The type of draw that the state's entity must carry out to make up the list of prequalified parties, when the number of interested parties that meets the conditions of the prequalification is higher than the maximum number established to make up the list.



5. The timetable of the prequalification.

**ART. 70 — Prequalification Report.** Once the expressions of interest and the documents with which the interested parties accredit their experience, training, publications and the capacity of organization are received, the state's entity must carry out the prequalification according to the call notice for the prequalification. The state's entity must write a prequalification report and publish it in the Secop for the term established in the call notice for the prequalification. The interested parties may make comments to the prequalification report during the two (2) business days after the publication thereof.

**ART. 71 — Prequalification Hearing.** The state's entity must hold a public hearing in which it will put together the list of prequalified parties interested in taking part in the respective contracting process. In the hearing it will answer the observations made to the prequalification report and it will notify the prequalification list according to the legal provisions. If the state's entity establishes a maximum number of interested parties to make up the list of prequalified parties and the number of interested parties that meet the prequalification conditions is higher than the maximum number established, in the prequalification hearing the state's entity must make the draw to make up the list, according what has been established in the call notice.

If the state's entity cannot make the prequalified parties' list, it may continue with the contracting process in the modality of open competition based on merits or with no prequalification.

**ART. 72 — Effects of the prequalification.** The conformation of the list of prequalified parties does not mean that the state's entity has the obligation to open the contracting process.

## CHAPTER IV

### Direct contracting

**ART. 73 — Administrative decision of justification of the direct contracting.** The state's entity must determine, in an administrative decision, the justification to contract under the direct contracting modality, which must contain:

1. The legal reason invoked for the direct contracting.
2. The purpose of the contract.
3. The budget for the contracting and the conditions that it will demand from the contractor.
4. The place in which the interested parties can consult the prior studies and documents.

This administrative decision is not necessary when the contract to be entered into is for the provision of professional services and of support to the administration, and for the contracts the subject matter of sub - sections a), b) and c) of article 75 of this decree.

**(Note: The Third Section of the State Council Issuing Judge Mauricio Fajardo Gómez, in Decision 2014 - 00035 of May 14, 2014, ordered the provisional and partial suspension of the final part of this article, in the section that says "and (c) of article 75 of this decree", but only to the extent that it corresponds to the exoneration that said provision contains in respect to the duty to justify, in a manner prior to the opening of the respective selection process, the legal grounds that support the modality of selection that it intends to pursue.)**

**ART. 74 — Declaration of express urgency.** If the causal of direct contracting is the express urgency, the administrative decision that so declares will be considered as the administrative decision of justification, and in this case the state's entity does not have the obligation to make prior studies and documents.

**ART. 75 — No publicity of prior studies and documents.** The prior studies and documents made for the following contracting processes are not public: a) the contracting of loans; b) the inter - administrative contracts entered into by the Ministry of Finance and Public Credit with the Banco de la República (Central Bank), and c) the contracts he subject matter of section 17 of article 65 and article 78 of this decree.

**ART. 76 — Inter – administrative pacts or contracts.** The modality of selection for the contracting between state's entities is the direct contracting; and in consequence, the provisions of article 73 of this decree are applicable to it.

When the entire budget of a state's entity is part of the budget of another one because of an inter – administrative pact or contract, the amount of the budget of the first one must be deducted from the budget of the second one to determine the contractual capacity of the state's entities.

**ART. 77 — Guarantees Not Mandatory.** In the direct contracting the requirement of guarantees established in title III of the special provisions of this decree is not mandatory and the justification to demand them must be contained in the prior studies and documents.

**ART. 78 — Contracting of goods and services in the defense sector, the National Intelligence Bureau and the National Protection Unit that require reserve for their acquisition.** The state's entities do not have the obligation to publish the documents of the process to acquire goods and services in the defense sector, the National Intelligence Bureau and the National Protection Unit that must be kept in reserve. In these contracting processes, the acquisition must be made in market conditions and it is not necessary to receive several offers.

The following goods, works and services require reserve for their acquisition:

1. Weapons, armament systems and their spare parts, ammunition, elements for the instruction thereof, handling, including the elements against riots, torpedoes and mines, tools and equipment for tests and maintenance of all of the foregoing.
2. Optronic and night - vision equipment, their accessories, spare parts and implements necessary for their operation.
3. Networks, information and communications' systems, including hardware and software, services and accessories, infrastructure for the informatics and physical cyber - defense and cyber - security, including the consultancy, the design, the methodologies of analysis, implementation and configuration required for the defense sector and the National Intelligence Bureau.
4. Ships, naval and river artifacts, and aircrafts, and any other equipment for air, maritime or river transportation required for the national defense, as well as its accessories, spare parts, elements for its operation and functioning, fuel and lubricants.



5. Military and police overland, maritime, river and air transportation vehicles with their accessories spare parts, fuels, lubricants and grease, necessary for the transportation of personnel and material of the defense sector, of the National Intelligence Bureau.
6. Specialized transportation services that must be kept in reserve to guarantee the life and the integrity of persons protected by the National Protection Unit.
7. Armored material and the acquisition of vehicles to be armored for the defense sector, the National Intelligence Bureau and the National Protection Unit that must be kept in reserve.
8. Air, surface and submarine detection equipment their spare parts and accessories, tuning and calibration equipment for the defense sector.
9. The goods, works and services related to the air, maritime and river navigation signaling and aids and their accessories, spare parts and all other inputs for its operation, technical information aimed to protect and safeguard the boundaries and borders and to ensure the sovereignty, the integrity of the national territory and the constitutional order, as well as the purchases and the contracts related to science and technology projects destined to establishing the physical and morphological conformation of the national territory for its defense.
10. The goods, works and services the purpose of which is to guarantee the life and integrity of the supreme commander of the armed forces of the Republic.
11. The goods and services for the administration, conservation, classification, ordering, keeping and systematization of the general and intelligence archives that are part of the Administrative Department of Security being suppressed and of the National Intelligence Bureau.
12. The goods and services that by virtue of their technical specification allow to maintain standardized logistic lines with the existing equipment of the public force, with no consideration to brands or origin.
13. Equipment and clothes with functionalities aimed to the personal, ballistic, nuclear, biological or chemical protection and textiles with functional finishing special for the manufacture of clothes.
14. The public works that have a direct relationship with the national defense and security, intelligence and counterintelligence, the safety of the facilities, the integrity of the personal and of the operations of the public force and of the National Intelligence Bureau, as well as the consultancies and inspectors related with them.
15. The goods, works and services related to the training, instruction and teaching of the personnel of the public force, of the National Protection Unit and of the National Intelligence Bureau, as well as for the design of strategies related to the defense, the national security, intelligence and counterintelligence.
16. The goods, works and services derived of the compensation to cargo of countries and suppliers of the goods and services set forth in article 65 and in this article. These goods and services must be acquired through industrial and social cooperation agreements, called offset, the purpose of which is to promote the transfer of technology to the public sector as well as to the real sector, and also to promote the industrial and social development of the country.



17. The goods, works and services to ensure the defense and security of the oil and gas, mining, power, road, and communications infrastructure and for the eradication of illicit crops, including the endowment of the military units engaged in this task, as well as the equipment, elements and services necessary to guarantee their permanence and operation in the areas the subject matter of protection.
18. The services for the maintenance of goods, works and services set forth in this article and the inspectorships required for the performance of the respective contracts.
19. The intelligence equipment, the reliability and credibility studies for intelligence personnel and the consultancy and inspectors regarding intelligence issues.
20. The goods and services listed in this article contracted with public – law foreign persons, or with suppliers authorized by them.

**(Note: The Third Section of the State Council Issuing Judge Mauricio Fajardo Gómez, in Decision 2014 - 00035 of May 14, 2014, ordered the provisional and partial suspension in a conditioned manner, of the segment of the first part of this article, which determines “it is not necessary to receive several offers”, but only to the extent that it is construed that this provision authorizes the state’s entities of the defense sector, the National Intelligence Bureau and the National Protection Unit, in the cases of acquisition of goods and services that must be kept in reserve, to enter into the corresponding contracts without complying with the objective selection principle and, hence, dispensing with any modality the purpose of which is to have plurality of offers. And it ordered the provisional suspension, in its entirety, of the second part of this article, including its sections 1 to 20, which reads “The following goods, works and services require reserve for their acquisition”, and that lists the goods, works and services that must be kept in reserve for the acquisition thereof.)**

**ART. 79 — Contracting to carry out Scientific and technological activities.** The direct contracting to carry out Scientific and technological activities must take into account the definition contained in Decree - Law 591 of 1991 and the other provisions that amend, clarify, add to or replace them.

**ART. 80 — Direct contracting when there is no plurality of offerors.** It is considered that there is no plurality of offerors when there is only one person who can provide the good or the service because it is the holder of the of industrial property rights or of the copyrights, or because it is the sole supplier in the national territory. These circumstances must be evidenced in the prior study that supports the contracting.

**ART. 81 — Contracts for the provision of professional services and performance support agreements, and agreements to perform artistic works that can only be entrusted to certain natural persons.** The state’s entities can contract, under the modality of direct contracting, the provision of professional services and of performance support agreements, with the individual or legal entity that is capable of performing the purpose of the contract, provided that the state’s entity verifies the suitability or experience required and related to the relevant area. In this case, it is not necessary that the state’s entity has previously obtained several offers, written proof of which must be recorded by the expenditure authority.

The professional and performance support services correspond to those of an intellectual nature other than consultancy derived from the compliance with the functions of the state’s entity, as well as the related to operational, logistic, or assistance activities.



The state's entity, for the contracting of artistic works that can only be entrusted to certain natural persons, must justify this situation in the prior studies and documents.

**ART. 82 — Acquisition of real property.** The state's entities can acquire property by direct contracting for which they must abide by the following rules:

1. Have the asset or real property appraised by a specialized institution (sic) identified that satisfy the needs that the state's entity has.
2. Analyze and compare the conditions of the real property that satisfy the needs that have been identified and the options for its acquisition, analysis that must consider the principles and objectives of the public procurement and purchasing system.
3. The state's entity can be a part of a real estate project to acquire the real property that satisfies the need that it has identified, in which case it does not require the appraisal the subject matter of section 1 above.

**ART. 83 — Lease of real property.** The state's entities may lease or rent real property by direct contracting for which they must follow the following rules:

1. Verify the conditions of the real estate market in the city in which the state's entity requires the property.
2. Analyze and compare the conditions of the real property that satisfy the needs identified and the rental options, analysis that must take into account the principles and objectives of the public procurement and purchasing system.

## CHAPTER V

### Minimum amount

**ART. 84 — Prior Studies for the minimum amount contracting.** The state's entity must make some prior studies that must contain the following:

1. The succinct description of the need that it intends to satisfy with the contracting.
2. The description of the contracting object identified with the fourth level of the goods and services' classifier.
3. The technical conditions required.
4. The estimated amount of the contract and its justification.
5. The term of execution of the contract.
6. The certificate of budgetary availability that backs the contacting.



**ART. 85 — Procedure for the minimum amount contracting.** The following rules are applicable to the contracting the amount of which does not exceed the 10% of the small amount of the state's entity, notwithstanding its purpose:

1. The state's entity must state in the invitation to take part in minimum amount processes, the information the subject matter of sections 2, 3 and 4 of the preceding anterior, and the manner in which the interested party must accredit its legal capacity and the minimum experience, if it is required, as well as the compliance with the technical condition required.
2. The state's entity may demand a minimum financial capacity when it does not make the payment upon delivery of the goods, works or services to satisfaction. If the state's entity requires financial capacity it must state the manner in which it will make the respective verification.
3. The invitation will be made for a term of no less than one (1) business day. If the interested parties make observations or comments to the invitation, the same will be answered by the state's entity before the expiration of the term to make offers.
4. The state's entity must review the economic offers and verify that the one of a lower price meets the conditions of the invitation. If it does not meet the conditions of the invitation, the state's entity must verify the compliance with the requirements of the invitation of the offer with the second best price, and so on and so forth.
5. The state's entity must publish the evaluation report for one (1) business day.
6. The state's entity must accept the offer with the lowest price, provided that it meets the conditions established in the invitation to participate in minimum amount processes. In the acceptance of the offer, the state's entity must inform the contractor the name of the supervisor of the contract.
  6. (sic) In case of a tie, the state's entity will accept the offer that was submitted earlier in time.
7. The offer and its acceptance are the contract.

**ART. 86 — Acquisition in major retail outlets in the case of minimum amount.** The state's entities must apply the following rules to acquire goods for up to the minimum amount in major retail outlets:

1. The invitation must be addressed to at least two (2) major retail outlets and it must contain: a) the technical, detailed and complete description of the asset, identified con the fourth level of the goods and services' classifier; b) the forma of payment; c) the place of delivery; d) the term for the delivery of the quotation, which must be of one (1) business day; d) the manner and the place of presentation of the quote, and e) the budgetary availability.
2. The state's entity must evaluate the quotes received and select the one that, with all conditions required, offers the lower price in the market, and accept the better offer.
3. In the case of a tie, the state's entity will accept the offer that was submitted earlier in time.
4. The offer and its acceptance are the contract.

**ART. 87 — Guarantees.** The state's entity is free to demand or not guarantees in the minimum amount selection process and in the acquisition in major retail outlets.

## TITLE II

### Disposal of goods of the State

#### CHAPTER I

##### General provisions

**ART. 88 — Application.** The abbreviated selection is the modality for the disposal of goods of the State, which is governed by the provisions contained in this chapter, excepting for the provisions applicable to the disposal of the goods on the charge of the Rehabilitation, Social Investment and Fight Against Organized Crime Fund and the disposal the subject matter of Law 1226 of 1995, the Decree - Law 254 of 2000 and Law 11105 of 2006.

**ART. 89 — (Amendment).** \* Frisco. No later than the 1st of January of 2014, the National Government must enact the rules for the disposal of the goods in the charge of the Rehabilitation, Social Investment and Fight Against Organized Crime Fund (Frisco).

**PAR. TRANS** — Before these rules are enacted, the disposal of the goods in the charge of the Frisco will be governed by the rules contained in Decree 734 of 2012.

**\*(Note: Amended by Decree 3054 of 2013 article 1° of the National Planning Department)**

**ART. 90 — Transfer of goods to CISA.** The transfer of goods of the state's entities of the national level to the Central of Investments CISA S. A., the subject matter of article 238 of Law 11450 of 2011, Decree 4054 of 2011, Decree 1764 of 2012 and Decree 2671 of 2012 and the provisions that amend, add to or replace them, must be made according to the rules established in those provisions.

**ART. 91 — Direct disposal or through suitable intermediary.** The state's entities that do not have the obligation to comply with the provisions of the preceding article, can carry out the disposal in a direct manner, or they can hire, for such purposes, promoters, investment bankers, auction houses, brokers of goods' and products' exchanges, or any other suitable intermediary, as corresponds to the type of good to be disposed of.

**ART. 92 — Selection of the suitable intermediary for the disposal of goods.** The state's entity must perform this selection through a contracting process in which it utilizes the rules of the abbreviated selection of small amount. If the suitable intermediary is a broker of a products' exchange, the state's entity must follow the procedure the subject matter of article 53 of this decree.

For the appraisal of the goods, the intermediaries will use appraisers duly enrolled in the National Appraisers' Registry of the Superintendence of Industry and Trade, and will be jointly and severally liable with them.

The causes of disqualification and incompatibility and the conflict of interest regime set forth in the Law are applicable (sic) to the intermediaries hired by the state's entities for the disposal of goods.

**ART. 93 — Purpose of the contract with the suitable intermediary.** The purpose of the contract is the commercial brokerage for the execution and delivery of the sale agreement. In the case of real property and chattels subject to registration, the intermediary must accompany the sale process up



to the registration and physical handing over of the asset, including the possibility of acting as attorney in fact for these purposes.

**ART. 94 — Prior Studies.** The prior studies and documents must contain, on top of what has been established in article 20 of this decree, the commercial appraisal of the asset and the minimum sale price, obtained according to the provisions of this decree.

**ART. 95 — Call notice.** The call notice must contain, besides what has been established in article 21 of this decree, the data that identifies the asset as well as the indication of the minimum conditions of the disposal, the figures of the commercial appraisal and the minimum sale price, if these are different. In the case of real property, the call notice must establish: a) the municipality or district in which they are located; b) their exact location, with indication of its nomenclature; c) the type of property; d) the percentage of ownership; e) number of page of the property record and cadastre ID; f) land use; g) area of the land and of the construction in square meters; h) whether or not there are encumbrances, debts or limitations of a legal, administrative or technical nature in force that limit the full rights thereon; i) the existence of contracts that affect or limit its use, and j) the identification of the state of occupation of the real property.

In the case of chattels, the notice must state: a) the municipality or district in which they are located; b) their exact location; d) the type of asset; e) whether or not there are encumbrances or limitations of a legal, administrative or technical nature in force that limit the full rights thereon, and f) the existence of contracts that affect or limit its use.

If the conditions of the goods require additional information to that stated in this article, the state's entity must publish it in the call notice or state the place in which the interested parties can obtain it.

**ART. 96 — Contents of the statements of conditions.** In addition to the provisions of article 22 of this decree, the statements of conditions must include the particular conditions that the possible offerors must have, and also:

1. Terms of payment of the price.
2. Formalities for the execution of the disposal agreement.
3. Term for the granting of the public deed, if such is the case.
4. Term for the registration, if that is the case.
5. Conditions of the material delivery of the asset.
6. The offeror's obligation to declare, in writing, the origin of the funds, which will be used for the purchase of the asset.

The state's entity may dispose of the asset in spite that it may have charges derived from taxes and contributions, debts of consumption or re – installation of public utilities and condominium fees, in which case it must express it in the statements of conditions and the offeror must accept those conditions, as it has to assume the debts that have been reported.

**ART. 97 — Requirement for the presentation of offer or bid.** To take part in the processes of disposal of goods of the State, the offeror must deposit, in favor of the state's entity a sum of no less



than twenty per cent (20%) of the minimum sale price, as enabling requirement to take part in the contracting process, amount that shall be allocated to the price when the interested party is the successful bidder.

The state's entity must give back the money deposited to the offerors the bids of which were not successful, within the term established in the statements of conditions, and no interest, returns or indemnifications thereon shall be acknowledged, and the financial transactions' tax will not be recognized.

If the offeror fails to comply with any of the obligations derived from the offer, such as the payment conditions, the execution of documents subject to registration, or any other issue derived from the legally binding agreement, it shall lose the sum of money deposited in favor of the state's entity which is construed as bid bond, without prejudice to the state's entity seeking damages derived from the noncompliance. In consequence no additional guarantee will be required from the offerors or from the buyer.

The offeror that is not successful may request the state's entity to keep the money deposited for another disposal process that the state's entity may be carrying out, to which funds can be added whenever necessary.

## CHAPTER II

### Mechanism of disposal

**ART. 98 — Direct disposal through offer made in closed envelope.** The state's entity that disposes of goods using the mechanism of offer made in closed envelope must follow the following procedure.

1. The state's entity must publish the calling, the prior studies, the project of statements of conditions, in which it must include the list of goods subject to the process of disposal.
2. Once the observations to the project of statements of conditions have been received and responded, the state's entity must issue the administrative decision of opening and publish it in the Secop together with the final statements of conditions.
3. Once the offers have been received, the state's entity must verify the compliance with the offerors' enabling requirements and it must publish the relevant report in the Secop together with the list of the goods for which offers were received.
4. The state's entity must call the hearing in the place, day and time determined in the statements of conditions.
5. In the hearing, the state's entity must open the economic offers of the qualified offerors and inform the best offer for the state's entity.
6. The state's entity grants to the offerors the opportunity to improve their offers, for one single time only.
7. Once this step has been completed, the state's entity must award the asset to the offeror that offered the best price for the state's entity.



**ART. 99 — Direct disposal through public auction.** The state's entity that transfers goods using the mechanism of public auction must follow the procedure established in article 41 of this decree, taking into account that the asset must be awarded to the offeror that offered the highest amount payable for the goods the subject of disposal and in consequence, the minimum margin must be upwards.

**ART. 100 — Disposal through suitable intermediaries.** The sale must be done through public auction, or using the private – law mechanism agreed with the intermediary.

## CHAPTER III

### Real property

**ART. 101 — Commercial appraisal of the asset.** The state's entity or its suitable intermediary must appraise the asset the subject of disposal. The appraisal may be carried out by the Agustín Codazzi Geographic Institute or by a specialized person enrolled in the National Appraisers Registry kept by the Superintendence of Industry and Trade. The appraisals are valid for one year.

**ART. 102 — Minimum sale price.** The state's entity must determine the minimum sale price based on the following variables:

1. Amount of the appraisal. Amount resulting from the commercial appraisal in force.
2. Income. All the revenues received by the state's entity from the assets, such as rent and returns.
3. Expenses. All the expenses incurred by the state's entity derived from the ownership of the asset, the marketing, the status of the legal title, the maintenance and the administration thereof, such as:
  - (a) Public services.
  - (b) Conservation, administration and oversight.
  - (c) Taxes and charges.
  - (d) Insurance.
  - (e) Sales promotion expenses.
  - (f) Costs and expenses related to the fixing of issues related to the legal title
  - (g) Commissions of trust companies.
  - (h) Warehousing expenses.
  - (i) Existing debts
4. Discount rate. It is the percentage at which the future cash flows are discounted to bring them to present value and to be able to determine an equivalent value of the asset, and it will be determined as a function of the DTF rate.
5. Marketing time. Corresponds to the time that the state's entity considers that it will take for the marketing of the assets in order to figure out the income and the expenditures that would accrue during that time.
6. Factors that define the marketing time. The following factors, among other, affect the asset's marketing time and allow classifying them as of high, medium or low marketing:
  - (a) Type of Asset.



- (b) Particular characteristics of the asset.
- (c) Market behavior.
- (d) Time of permanence of the asset in the inventory of the state's entity.
- (e) Number of offers received.
- (f) Number of visits received.
- (g) Marketing time established by the appraiser.
- (h) Legal status of the asset.

7. Legal status of the title of the assets. The following will be considered:

- (a) Transferable asset with title OK: It is the asset that does not present any legal, administrative or technical problem, that is free of debts for whatever reason, as well as the one regarding which there are no issues that prevent its transfer.
- (b) Transferable asset with title with issues: It is the asset that does present legal, administrative or technical problems that limit their use, exploitation and enjoyment, but that do not prevent their transfer to third parties.

8. Calculation of the minimum sale price. The minimum sale price is figured out as the difference between the updated amount of the income including the cost of the appraisal of the asset and the updated amount of the expenses at a given discount rate.

**ART. 103 — Granting of the public deed.** The public deed must be executed in the relevant distribution notary no later than forty five (45) calendar days after the date in which the awardee accredits the total payment of the sale price. It is only possible to grant public deed before the total payment total of the balance of the real property when it is necessary to comply with conditions for the disbursement of the sale price.

If the offeror intends to pay the price with a loan or a leasing, it must accredit such circumstance in the auction by means of the presentation of a letter issued by the financial entity evidencing the preapproval of the loan. It must also state if it requires the execution of a sale and purchase promise as requirement for the disbursement of a loan or for the withdrawal of the severance fund.

In the event that any force majeure or fortuitous event occurs which is not attributable to the parties, they may change, by mutual consent, the date of granting of the public deed, in a document signed by the parties.

**ART. 104 — Registration expenses and Notary Charges.** The notary charges the expenses of photocopies, authentications and the sales and registration taxes will be figured out and paid according to the legal provisions in force in this regard.

**ART. 105 — Material delivery of the real property.** The state's entity must deliver the real property within thirty (30) calendar days after the registration date, upon the submission of the transfer and title certificate evidencing the registration of the property's sale deed.

The obligations accrued on the real property after the registration of the assets are on the charge of the buyer.



## CHAPTER IV

### Chattels

**ART. 106 — Minimum sale price of chattels not subject to registration.** The state's entity must take into account the results of the study of the market conditions, the State of the chattels and the valor record in the accounts' books thereof.

**ART. 107 — Minimum sale price of chattels subject to registration.** The state's entity must bear the following in mind:

1. The state's entity must obtain a commercial appraisal made by any individual or private entity enrolled in the National Appraisers Registry, excepting when the asset to be disposed is a two (2) axis motor car because, independent from its class, type of service, weight or capacity, for cargo or for passengers, the state's entity must use the amounts established in an annual manner by the Transportation Ministry.
2. Once the commercial value has been established, the state's entity must deduct the estimated amount of the expenses in which it must incur for the maintenance and use of the asset in a term of one (1) year, such as conservation, administration and oversight, taxes, encumbrances, insurance and warehousing expenses, among other.

**ART. 108 — Disposal of chattels at gratuitous title between state's entities.** The state's entities must make an inventory of the chattels that they do not utilize and offer them, free of charge, to the state's entities through a reasoned administrative decision that they must publish in their website.

The state's entity interested in acquiring these goods at gratuitous title must so express it in writing within thirty (30) calendar days after the date of publication of the administrative decision. In that communication the state's entity must inform the functional need that it intends to satisfy with the good and the reasons that justify its the application thereof.

If there are two or more expressions of interest of state's entities regarding the same good, the state's entity that first expressed its interest must be preferred. The legal representatives of the state's entity that is the holder of the asset and of the one that wishes to receive it, must enter into delivery minutes in which they must establish the date of the material delivery of the asset, which must not be of ore than thirty (30) calendar days, as from the date of execution of the delivery minutes.

**ART. 109 — Disposal of other goods.** To dispose of another type of goods such as loan portfolio, receivables, trust funds, the state's entities that do not have the obligation to apply the provisions mentioned in article 90 of this decree, must determine the minimum sale price taking into consideration, among other things, the following parameters:

1. The construction of the flow of payments of each obligation, according to the current conditions of the credit and / or accounts receivable.
2. The estimation of the flow's discount rate as a function of the DTF, taking into consideration the risk factors of inherent to the debtor and to the operation that may affect the normal payment of the obligation.



3. The calculation of the net present value of the flow, adding to the discount rate the calculated risk premium.
4. The expenses associated to the collection of the future receivables, the guarantees associated to the obligations, late payments and statute of limitations related to the collection.
5. The time expected for the recovery of the receivables by direct collection or by court order.
6. The other considerations universally accepted for this type of operations.

This provision is not applicable to the disposal of tax receivables.

### TITLE III

#### Guarantees

### CHAPTER I

#### General Issues

**ART. 110 — Risks that must be covered by the guarantees related to the state’s contracting.**

The compliance with the obligations that arise in favor of the state’s entities because of: (i) the presentation of the offers; (ii) the contracts and their liquidation; and (iii) the risks to which the state’s entities are exposed, derived from the third party liability that may arise because of the acts, facts or omissions of its contractors and subcontractors, must be guaranteed in the terms of the law and of this decree.

**ART. 111 — Classes of guarantees.** The guarantees that the offerors or contractors may grant to ensure the compliance with their obligations are:

1. Insurance contract contained in an insurance policy.
2. Stand - alone trust fund.
3. Bank guarantee.

**ART. 112 — Indivisibility of the guarantee.** The guarantee of coverage of the risk is indivisible. However, in the contracts with a term of more than five (5) years, the guarantees may cover the risks of the stage of the contract or of the contractual period, according to the provisions of the contract.

In consequence, the state’s entity in the statements of conditions for the contracting process must state the guarantees demanded by each stage of the contract or each contractual period as follows:

1. The state’s entity must demand an independent guarantee for each stage of the contract or for each contractual period or each functional unit in the case of the public - private associations, the term of which must be at least the same established for the respective stage of the contract or contractual period.
2. The state’s entity must calculate the insured value for each stage of the contract, contractual period or functional unit, taking the amount of the contractor’s obligations for each stage of the



contract, contractual period or functional unit and according to the rules of sufficiency of the guarantees established in this decree.

3. Before the expiration of each stage of the contract or of each contractual period, the contractor has the obligation to obtain a new guarantee that covers the compliance with its obligations for the subsequent stage of the contract or contractual period; if it does not do so the rules established for the reestablishment of the guarantee will apply.

If the guarantor of a stage of the contract or a contractual period decides not to continue guaranteeing the subsequent stage of the contract or contractual period, it must inform its decision, in writing, to the state's entity the beneficiary of the guarantee six (6) months before the expiration of the term of the guarantee. This notice does not affect the guarantee of the contractual stage or contractual period being executed. If the guarantor does not give the notice with the time mentioned and the contractor does not obtain a new guarantee, it has the obligation to guarantee the next stage of the contract or the contractual period.

**ART. 113 — Guarantee of the plural offeror.** When the offer is presented by a plural bidder, as joint venture, consortium or promise of future company, the guarantee must be given by all of its members.

**ART. 114 — Coverage of the risk of third party liability.** The third party liability of the administration derived from the acts, facts or omissions of its contractors or subcontractors can only be secured with an insurance contract.

**ART. 115 — Guarantee of the risks derived of the default of the offer (bid bond).** The bid bond must cover the sanction derived from the failure to comply with the offer, in the following events:

1. The failure to extend the term of the bid bond when the term for the awarding or to sign the contract is extended, provided that such extension is of less than three (3) months.
2. The withdrawal of the offer after the expiration of the term established for the presentation of the offers.
3. The failure to execute the contract without cause on the awardee's part.
4. The successful bidder's failure to furnish the contract's performance guarantee.

**ART. 116 — Performance Guarantee.** The contract's performance guarantee must cover:

1. Good management and correct investment of the advanced payment. This insurance covers the damages suffered by the state's entity because of: (i) the no investment of the advanced payment; (ii) the undue use of the advanced payment; and (iii) the undue appropriation of the funds received as advanced payment.
2. Pay back of the advanced payment. This insurance covers the damages suffered by the state's entity due to the failure to return, in whole or in part, the money given to the contractor as advanced payment, when such is the case.
3. Contractual performance. This insurance guarantees to the state's entity the damages derived from:



- (a) the total or partial failure to comply with of the contract, when such failure is attributable to the contractor;
  - (b) the late or defective performance of the contract, when such failure is attributable to the contractor;
  - (c) the damages attributable to the contractor due to the partial deliveries of the work, when the contract does not contemplate such partial deliveries; and
  - (d) the payment of the amount of the fines and of the penalty clause.
4. Payment of salaries, legal benefits and indemnifications. This insurance must cover for the state's entity the damages caused by the contractor's failure to comply with its labor obligations derived from the contracting of the personnel utilized in the national territory for the performance of the contract being insured.

The state's entity must not demand a guarantee to cover this risk in the contracts performed outside the national territory with personnel hired under a legal regime other than the Colombian.

- 5. Stability and quality of the works. This insurance covers for the state's entity the damages caused by any type of damage or impairment, imputable to the contractor, suffered by the works delivered to satisfaction.
- 6. Quality of the service. This insurance covers for the state's entity the damages derived from the deficient quality of the service rendered.
- 7. Quality and correct functioning of the goods. This insurance must cover the quality and the correct functioning of the goods received by the state's entity pursuant to a contract.
- 8. The other failures to comply with obligations that the state's entity considers that must be insured in a manner proportional and adequate according to the nature of the contract.

**ART. 117 — Coverage of the third party liability.** The state's entity must demand in the works' contracts, as well as in those in which due to their purpose or nature it is considered as necessary, because of the risks of the contract, the granting of a third party liability insurance that protects it against eventual claims from third parties derived of the third party liability arising from the acts, facts or omissions of its contractor.

The state's entity must demand that the third party liability insurance policy also covers the damages caused by eventual claims of third parties derived from the third party liability that arises from the acts, facts or omissions of the authorized subcontractors or, otherwise, that it evidences that the subcontractor has its own insurance with the same purpose and in which the state's entity is the insured.

**ART. 118 — Sufficiency of the bid bond.** The bid bond must be in force from the moment in which the offer is submitted up to the moment of approval of the contract's performance guarantee and the value thereof must be of at least ten per cent (10%) of the valor of the offer.

The amount of the bid bond submitted by the bidders in a price master agreement's contracting process must be of one thousand (1000) smmlv.



The amount of the bid bond submitted by the bidders in the inverted auction and in the competition based on merits must be equivalent to ten per cent (10%) of the estimated official budget of the contracting process.

When the amount of the offer or the estimated contracting budget is higher than one million (1.000.000) smmlv the following rules will apply:

1. If the amount of the offer is higher than one million (1.000.000) of smmlv and up to five million (5.000.000) smmlv, the state's entity may accept guarantees that cover at least two point five per cent (2.5%) of the amount of the offer.
2. If the amount of the offer is higher than five million (5.000.000) smmlv and up to ten million (10.000.000) smmlv, the state's entity can accept guarantees that cover at least one per cent (1%) of the amount of the offer.
3. If the amount of the offer is higher than ten million (10.000.000) smmlv, the state's entity may accept guarantees that cover at least zero point five per cent (0.5%) of the amount of the offer.

**ART. 119 — Sufficiency of the guarantee for the good management and correct investment of the advanced payment.** The guarantee for the good management and correct investment of the advanced payment must be in force up to the winding up liquidation of the contract or until the amortization of the advanced payment, according to what has been determined by the state's entity. The amount of this guarantee must be one hundred per cent (100%) of the amount established as advanced payment, whether it was it is in cash or in kind.

**ART. 120 — Sufficiency of the prepayment guarantee.** The prepayment guarantee must be in force until the winding up of the contract or until the moment in which the state's entity verifies that compliance all the activities or the delivery of all the goods or services associated to the prepayment, according to lo what has been determined by the state's entity. The amount of this guarantee must be of one hundred per cent (100%) of the prepaid amount, whether it was it is in cash or in kind..

**ART. 121 — Sufficiency of the performance guarantee.** The contract's performance guarantee must be in force at least until the winding up of the contract. The amount of this guarantee must be of at least ten per cent (10%) of the amount of the contract unless the amount of the contract is higher than one million (1.000.000) smmlv, in which case the state's entity shall apply the following rules:

1. If the amount of the contract is higher than one million (1.000.000) of smmlv and up to five million (5.000.000) smmlv, the state's entity may accept guarantees that cover at least two point five per cent (2.5%) of the amount of the contract.
2. If the amount of the contract is higher than five million (5.000.000) smmlv and up to ten million (10.000.000) smmlv, the state's entity can accept guarantees that cover at least one per cent (1%) of the amount of the contract.
3. If the amount of the contract is higher than ten million (10.000.000) smmlv, the state's entity may accept guarantees that cover at least zero point five per cent (0.5%) of the value of the contract.



4. Colombia Compra Eficiente must determine the value of the dole performance guarantee of the prices' master agreement according to the purpose, the value, the nature and the obligations contained in it.

**ART. 122 — Sufficiency of the guarantee for the payment of salaries, legal benefits and indemnifications.** This guarantee must be in force for the term of the contract and three (3) years more. The value of the guarantee cannot be of less than five per cent (5%) of the total value of the contract.

**ART. 123 — Sufficiency of the guarantee of stability and quality of the works.** This guarantee must be in force for a term of no less than five (5) years as from the date in which the state's entity receives the works to satisfaction. The state's entity must determine the amount of this guarantee in the contracting process' statements of conditions, according to the purpose, the amount, the nature and the obligations contained in the contract.

The state's entity may accept that the term of this guarantee may be of less than five (5) years with the prior justification of an expert in the matter the subject of the contract.

**ART. 124 — Sufficiency of the guarantee of quality of the service.** The state's entity must determine the amount of this guarantee according to the purpose, the amount, the nature and the obligations contained in the contract. In the inspectors' contracts, the term of this cover must be equal to the term of the stability guarantee of the main contract pursuant to the paragraph of article 85 of Law 11474 of 2011.

**ART. 125 — Sufficiency of the guarantee of quality of goods.** The state's entity must determine the amount of this guarantee according to the purpose, the amount, the nature, the obligations contained in the contract, the presumed minimum guarantee and the hidden defects.

**ART. 126 — Sufficiency of the third party liability insurance.** The insured value of the insurance contracts that cover the third party liability must no be of less than ser inferior to:

1. Two hundred (200) smmlv for contracts the amount of which valor is lower than or equal to one thousand five hundred (1.500) smmlv;
2. Three hundred (300) smmlv for contracts the amount of which valor is higher than one thousand five hundred (1.500) smmlv and lower than or equal to two thousand five hundred (2.500) smmlv;
3. Four hundred (400) smmlv for contracts the amount of which valor is higher than two thousand five hundred (2.500) smmlv and lower than or equal to five thousand (5.000) smmlv;
4. Five hundred (500) smmlv for contracts the amount of which valor is higher than five thousand (5.000) smmlv and lower than or equal to ten thousand (10.000) smmlv;
5. The five per cent (5%) of the value of the contract when it is higher than ten thousand (10.000) smmlv, in which case the insured value must be of a maximum of seventy five thousand (75.000) smmlv.

The validity of this guarantee must be equal to the term of performance of the contract.



**ART. 127 — Reestablishment or expansion of the guarantee.** When because of the claims made by the state's entity the amount of the guarantee is reduced, the state's entity must ask the contractor to reestablish the initial amount of the guarantee.

When the contract is amended to increase its amount or to extend its term, the state's entity must demand that the contractor increases the amount of the guarantee granted or extends its term, as the case may be.

The state's entity must determine, in the statements of conditions for the contract, the appropriate mechanism to reestablish the guarantee, when the contractor fails to comply with its duty to obtain, maintain or add to it.

**ART. 128 — Effectiveness of the guarantees.** The state's entity must enforce the guarantees set forth in this chapter as follows:

1. In the administrative decision in which the state's entity declares the forfeiture of the contract and orders the contractor and the guarantor to pay either of the penalty clause or of the damages that it has quantified. The administrative decision of forfeiture is the loss.
2. In of the administrative decision in which the state's entity imposes fines, it must order the contractor and the guarantor to pay. The relevant administrative decision is the loss.
3. In the administrative decision in which the state's entity declares the noncompliance, it can enforce the penalty clause, if it has been agreed in the contract, and order the contractor and the guarantor to pay. The relevant administrative decision is the claim for the insurance company.

## CHAPTER II

### Insurance contract

**ART. 129 — Covers.** The object of each one of the covers must correspond to those defined in articles 115, 116 and 117 of this decree.

The covers must be independent between them regarding their risks and insured values. The state's entity can only claim or take the value of a cover to pay or settle the amount of the respective cover. The covers are exclusive and cannot be accumulated.

**ART. 130 — Assignment of the contract.** If the assignment of the contract in favor of the guarantor is possible, the latter has the obligation to establish the guarantees determined in the contract.

**ART. 131 — Exclusions.** The state's entity will only admit the following exclusions in the insurance contract that covers the performance of the contracts entered into by it, and any other provision that expressly or tacitly introduces exclusions other than these, shall have no effects whatsoever:

1. Alien cause, namely force majeure or fortuitous event, the act of a third party or the victim's sole responsibility.
2. Damages caused by the contractor to the goods of the state's entity not destined to the contract.
3. Undue or inadequate use or lack of preventive maintenance to which the state's entity is obligated.



4. The normal deterioration suffered by the goods handed over because of the guaranteed contract as a consequence of the lapse of time.

**ART. 132 — Inapplicability of the proportionality clause.** In the insurance contract that covers the compliance, the insurance company cannot include the proportionality clause or any other similar clause in the sense that the insured value covers the damages derived from the total noncompliance of the guaranteed contract but, in the case of a partial breach, the insurance company only pays the damages caused as a proportion of the partial breach the guaranteed obligation. The inclusion of a clause in this sense will have no effects whatsoever.

**ART. 133 — Inapplicability of the automatic termination and of the power of revocation of the insurance.** The sole performance guarantee issued in favor of state's entities does not expire due to the lack of payment of the premium and it cannot be unilaterally revoked.

**ART. 134 — Unenforceability of defense of the insurance company.** The insurance company cannot contest or defend against the claims filed by the state's entity arguing the conduct of the taker of the insurance, in particular the inaccuracies or concealments on its part because of the purchase of the insurance or any other exception that the insurer may have against the contractor.

**ART. 135 — Prohibition to the insurance companies.** For the sale of any of the covers the subject matter of this chapter, the insurance companies cannot force the bidders or the contractors to purchase covers not demanded by the state's entity.

**ART. 136 — Sanction for the failure to comply with the bid.** In the event of a loss under the bid bond, the insurance company must answer for the entire insured value, as sanction.

**ART. 137 — Requirements of the of third party liability insurance.** The third party liability insurance must meet the following requirements:

1. Modality of occurrence. The insurance company must issue the cover in the modality of occurrence or event. In consequence, the insurance contract cannot set forth terms to lodge the claim, lower than the terms of stature of limitations established in the Law for the respective liability action.
2. Parties. The state's entity and the contractor must be the insured in respect of the damages caused by the contractor because of the execution of the insured contract, and the beneficiaries will be both the state's entity and the third parties that may be affected by the responsibility of the contractor or its subcontractors.
3. Covers. The of third party liability cover must also contain, besides the basic premises, works and operations' coverage, at least the following covers:
  - a) Express coverage of damages for direct damages and loss of profit.
  - b) Express coverage of non - pecuniary damages.
  - c) Express coverage of the liability arising from acts of contractors and subcontractors, excepting when the subcontractor has its own third party liability insurance with the same covers herein required.



- d) Express employer coverage.
- e) Express owned and not owned vehicles' coverage.

**ART. 138 — Mechanisms of participation in the loss by the insured state's entity.** The insurance contract that covers the third party liability an only establish deductibles of up to ten per cent (10%) of the amount of each loss and in any case these can be of more than two thousand (2000) smmlv. No franchises, mandatory co – insurance and other forms of stipulation that mean the assumption of part of the loss by the insured entity will be acceptable.

**ART. 139 — Protection of the goods.** The state's entity must demand from its contractor an insurance contract that covers liability responsibility when pursuant to the performance of the contract there is a risk of damage of the goods of the state's entity. The state's entity must define the insured value in the statements of conditions.

## CHAPTER III

### Stand - alone trust fund

**ART. 140 — Stand - alone trust fund as guarantee.** The commercial trust agreement which creates the stand - alone trust fund that serves as guarantee for the offer or for the compliance with the contract in the terms of articles 115 and 116 of this decree, must comply with the following requirements and include the following aspects:

1. The trustor must be the offeror or the contractor or whoever is willing to guarantee their obligations and who has the power to do so, and the trust company, duly authorized for such purposes by the Financial Superintendence or whoever takes its place.
2. The contracting state's entity must be the beneficiary of the stand - alone trust fund.
3. The trust company has the obligation to carry out the acts necessary for the conservation of the goods in trust or adopt the measures necessary for those who has them guarantees such conservation.
4. The trust company must periodically make the assessments and appraisals of the goods that make up the stand - alone trust fund, to look after the sufficiency and suitability of the guarantee.
5. The trust company must give notice to the state's entity and to the trustor within a term of three (3) days after the date in which it first learns of the insufficiency of the stand - alone trust fund for the payment of the guaranteed obligations, caused by the reduction of the market value of the goods that make it up, and demand from the trustor the replacement or increase of the goods in trust to comply with the provisions related to the sufficiency of the guarantee.
6. The obligation of the trustor of replacing or increasing the goods granted in concession within a term of thirty (30) calendar days after the request made by the trust company.
7. The procedure for the replacement of goods or for the incorporation of new goods into the stand - alone trust fund.



8. The procedure that must be followed regarding the noncompliance of the offeror or of the contractor.
9. The obligations of the trust company including its obligations of custody and administration of the goods, periodic verification of the value of the stand - alone trust fund, rendering of accounts and periodic reports.
10. The manner in which the payment in kind of the goods in trust proceeds, for which it is necessary that more than one (1) year has lapsed from the date in which the state's entity asked the trust company to enforce the guarantee and it has not been possible to dispose of the goods in trust. In this case, the state's entity must receive the payment in kind for fifty per cent (50%) of the updated appraisal of the goods, without prejudice to the state entity's seeking the payment of the damages caused that have not been paid in full.

**ART. 141 — Admissibility of goods to make up the stand - alone trust.** The goods or rights given in trust to create the guarantee stand - alone trust fund in the terms of articles 115 and 116 of this decree, must offer to the state's entity a suitable and sufficient backing for the payment of the guaranteed obligations.

The state's entity can only accept as guarantee the stand - alone trust fund made up by the following goods and rights:

1. Securities that be part of the collective portfolios of the financial market, or the individual participation of the contractor in collective portfolios. The state's entity shall recognize, for the purposes of the calculation of the value of the guarantee up to ninety per cent (90%) of the amount of such securities.
2. Real property free from liens or encumbrances of a value of more than two thousand (2000) smmlv, that generate income in one (1) year for an amount higher than zero point seventy five per cent (0,75%) per month of the realizable price established in the appraisal that must be made by an expert, according to the next article of this decree. Such income cannot be on the charge of the guaranteed contractor and must be part of the stand - alone trust fund. The state's entity shall recognize for the purposes of the calculation of the value of the guarantee up to seventy per cent (70%) of the value of the appraisal of the real property given in trust.

**ART. 142 — Appraisal of the real property given in trust.** The trust company must order the appraisal of the real property, which must be made under the criterion of short – term realizable value for the purposes of determining the sufficiency of the guarantee. The trust company must update the appraisal with the frequency established in the applicable provisions. If the appraisal is reduced by more than ten per cent (10%) from year to year, the trustor must provide new goods so the guarantee is sufficient.

The appraisal must be made by a specialized institution registered with the national appraiser's registry kept by the Superintendence of Industry and Trade. The remuneration of the appraisers and of the costs of the appraisal must be covered by the trust company against the funds in trust.

**ART. 143 — Certificate of guarantee.** The trust company must issue, in the name of the state's entity, a guarantee certificate, which must contain the following information:



1. The sufficiency of the guarantee for each one cover, in the terms of articles 118 to 125 of this decree.
2. The updated financial statements of the stand - alone trust fund and a description of the goods that make it up.
3. The procedure to be completed in case that the guarantee must be enforced, which cannot impose on the state's entity conditions more onerous conditions than those contained in this decree.
4. The guaranteed risks.
5. The precedence that the state's entity has for the payment.
6. The mechanisms through which the trust company may enforce the guarantee without affecting its sufficiency.

**ART. 144 — Non - performed contract exception.** The trust company cannot propose the non - performed contract exception against the state's entity.

**ART. 145 — Withholding.** From the periodic income produced by the goods or rights that make up the stand - alone trust fund, the trust company may withhold one per cent (1%) per month until completing the amount equivalent to three per cent (3%) of the appraisal of the asset or security, sums of money that it must invest in a collective portfolio of the financial market for the conservation, defense and recovery of the goods in trust and the expenses necessary to enforce the guarantee.

## CHAPTER IV

### Bank guarantees

**ART. 146 — Bank guarantees.** The state's entity can receive as guarantee, in the terms of articles 115 and 116 of this decree, bank guarantees and stand by letters of credit, provided that they meet the following conditions:

1. The guarantee must be certified in a document issued by a financial institution duly authorized by the Financial Superintendence or whoever takes its place, according to the provisions of the organic statute of the financial system.
2. The guarantee must be effective at first demand of the state's entity.
3. The bank guarantee must be irrevocable.
4. The bank guarantee must be sufficient in the terms of articles 118 to 125 of this decree.
5. The guarantor must have waived the benefit of excussion.



## CHAPTER V

### Guarantees for the contracting of satellite technology

**ART. 147 — Guarantees to cover the risks derived from the satellite technology contracting processes.** In the contracting processes for the design, fabrication, construction, launching, putting into orbit, operation, use or exploitation of satellite systems, equipment and space components, the state's entity shall require the guarantees usually utilized and accepted in the industry to cover the insurable risks identified in the prior studies and documents.

## TITLE IV

### Application of commercial agreements, incentives, contracting abroad and with cooperation bodies

## CHAPTER I

### Commercial agreements and national treatment

**ART. 148 — Timetable of the contracting process.** When the contracting process is subject to one or several commercial agreements, the state's entity must make the timetable according to the terms established in those commercial agreements.

**ART. 149 — Concurrence of several commercial agreements.** If one same contracting process is subject to several commercial agreements, the state's entity must adopt all necessary measures for the compliance with all the commitments set forth in the commercial agreements.

**ART. 150 — Existence of national treatment.** The state's entity must grant national treatment to: (a) the offerors, goods and services from of States with which Colombia has commercial agreements, in the terms established in such commercial agreements; (b) to the goods and services from of States with which there are no commercial agreements but in respect of which the National Government has certified that the offerors of national goods and services enjoy national treatment, based on the review and comparison of that State's purchasing and public procurement regulations; and (c) to the services rendered by offerors members of the Andean Community of Nations taking into account the Andean regulation applicable to the subject.

The Ministry of Foreign Affairs must issue the certificate evidencing the situation mentioned in sub - section (b) above in respect to a particular State, which is not required to accredit the situations the subject matter of sub - sections (a) and (c) above. To confirm that the offerors of national goods and services enjoy national treatment in a State, the Ministry of Foreign Affairs must review and compare the regulation regarding purchasing and public procurement of the respective State for which it can request the technical support the Ministry of Commerce, Industry and Tourism and of Colombia Compra Eficiente, within their legal competences.

The certificates to accredit the condition the subject matter of sub - section (b) anterior must be published in the manner and opportunity established for such purposes by Colombia Compra Eficiente. The validity of the certificates will be of two years as from the date of their issuance, without prejudice to the Ministry of Commerce, Industry and Tourism and Colombia Compra Eficiente requesting the Ministry of Foreign Affairs the review thereof pursuant to the enactment of new regulations in the State regarding which the certificate has been issued. Colombia Compra Eficiente may determine, via a circular letter, the manner in which the Ministry of Foreign Affairs must confirm



that the offerors of national goods and services enjoy national treatment and in which it revises and compares the regulations regarding purchasing and public procurement for the issuance of the certificate.

## CHAPTER II

### Incentives in the public procurement

**ART. 151 — Incentives in the public procurement.** The state's entity must establish in the statements of conditions for the contracting, within the criteria for the qualification of the offers, the incentives for the national goods, services and offerors or those considered as national because of the existence of national treatment.

This incentive is not applicable to the processes for the acquisition of goods and services of uniform technical characteristics.

**ART. 152 — Calling limited to Mipyme.** The state's entity must limit to national Mipyme entities with at least one (1) year of existence the calling of the contracting process in the modality of public tender, abbreviated selection and competition based on merits when:

1. The amount of the contracting process is lower than one hundred and twenty five thousand dollars of the United States of America (US\$ 125.000), calculated using the exchange rate determined for such purposes every two years by the Ministry of Commerce, Industry and Tourism; and
2. The state's entity has received applications of at least three (3) national Mipyme entities to limit the calling to national Mipyme. The state's entity must receive these applications at least one (1) business day before the opening of the contracting process.

**ART. 153 — Territorial Limitations.** The state's entities may make callings limited to national Mipyme domiciled in the departments or municipalities in which the contract is to be performed. The Mipyme must accredit its domicile with the commercial registry or the certificate of existence and incumbency of the enterprise.

**ART. 154 — Accreditation of requirements to take part in limited callings.** The national Mipyme must accredit its condition with a certificate issued by the legal representative and the statutory auditor, if it has the obligation to have one, or the accountant, certifying that the Mipyme has the business size established according to the law.

In the limited callings, the state's entity must only accept the offers of Mipyme, consortia or joint ventures made up by Mipyme only, and promises of future company entered into by Mipyme.

**ART. 155 — Technological Disaggregation.** The state's entities may technologically disaggregate the investment projects to allow:

- (a) the participation of nationals and foreigners, and
- (b) the assimilation of technology by the nationals.

In this case, the state's entities may carry out several contracting processes according to the technological disaggregation to seek the participation of the national industry and labor.



## CHAPTER III

### Contracts performed outside the national territory

**ART. 156 — Regime applicable to the contracts performed abroad.** The contracting processes carried out the state's entities abroad for the contracts that must be performed outside the national territory may be subject to the foreign law.

## CHAPTER IV

### Contracts or agreements with international bodies

**ART. 157 — Applicable regime to the international cooperation contracts or agreements.** The contracts or agreements funded in whole or in amounts equal to or higher than fifty per cent (50%) with funds from the cooperation, assistance or international aid bodies may be subject to the regulations of such entities including the resources of national source contributions or their equivalent tied to these operations in the agreements signed, or their regulations, as the case may be. On the contrary, the contracts or agreements that are executed in their entirety or in amounts equal to or higher than fifty per cent (50%) with funds of a national origin will be subject to this decree.

If the national or international source contribution of a contract or international cooperation agreement is amended or if the contributions are not executed in the terms agreed, the state's entities must amend the contracts or agreements so the same become subject to the provisions of the public procurement and purchasing system, if the contribution of public resources is higher than fifty per cent (50%) of the total or the internal norms of the cooperation entity if the contribution is lower.

When the variation of the participation of the contributions of the parties is the consequence of the fluctuations of the exchange rate of the currency agreed in the international cooperation contract or agreement, it shall continue being subject to the rules established at the time of its execution.

The resources generated pursuant to the contracts or agreements financed with funds from cooperation, assistance or international aid bodies must not be taken into account to determine the percentages of the contributions of the parties.

The contracts or agreements financed with funds of the multilateral credit bodies, foreign governmental entities or foreign public – law persons, as well as those the subject matter of the 2nd part of article 20 of Law 11150 of 2007, will be performed according to the provisions of the master and supplementary international treaties, and in the agreements signed, or their regulations, as the case may be, including the resources of national source contributions or their equivalents tied to such operations in those documents, and the percentage set forth in the first part of article 20 of Law 11150 of 2007 is not applicable to them.

The contracts with foreign public – law persons must be entered into and performed as per the agreement of the parties.



## TITLE V

### Colombia Compra Eficiente

**ART. 158 — Implementation of the of annual acquisitions' plan model.** Colombia Compra Eficiente must establish the guidelines and it will design and implement the form that must be utilized by the state's entities to make the annual acquisitions' plan, within the three (3) months after the enactment of this decree.

**ART. 159 — Standards and model documents.** Without prejudice to the permanent function that Decree - Law 4170 of 2011 assigns to it, Colombia Compra Eficiente must design and implement the following standardized and specialized instruments per type work, good or service to be contracted, as well as any other manual or guide that is deemed as necessary or that is requested by the participants of the public procurement:

1. Manuals for the use of the prices' master agreements within two (2) months after the enactment of this decree.
2. Manuals and guides for: (a) the identification and coverage of the risk; (b) the determination of the residual capacity for the public works' contracts depending of the value thereof; (c) the elaboration and update of the annual acquisitions' plan; and (d) the use of the goods and services' classifier; these must be enacted within two (2) months after the date in which this decree is enacted.
3. Model statements of conditions for contracting within six (6) months after the enactment of this decree.
4. Standard models of contracts within six (6) months after the expedition of this decree.

**ART. 160 — Contracting Manual.** The state's entities must have a contracting manual, which must comply with the guidelines that for such purposes are determined by Colombia Compra Eficiente within a term of six (6) months after the enactment of this decree.

Final Provisions

**ART. 161 — Validity.** This decree is in force as from the 15th of August of 2013.

**ART. 162 — Transition Regime.** The following is this decree's transition regime:

1. **Transition Regime of the provisions about the RUP.** The bidders that as of the date of enactment of this decree are not registered with the RUP or those whose registration has not been renewed, can request their registration without using the industrial international uniform classification (CIU). The registration of the bidder in the RUP, in force on the date of enactment of this decree, shall maintain its validity until the moment in which the chambers of commerce are enabled to receive the renewals utilizing the goods and services' classifier, but no later than the 1st of April of 2014.

As from the first primer business day of April of 2014, for the registration, renewal and update of the RUP all the bidders must utilize the goods and services' classifier.

2. **Transitory application of Decree 734 of 2012.** The state's entities that, due to operational reasons derived from the need to adjust their internal contracting procedures to the new regulation



consider that it is necessary to continue applying the provisions of Decree 734 of 2012 can do so for all their contracting processes throughout the transition period, which goes until the 31st of December of 2013.

For these purposes, the state's entities must issue, no later than the 15th of August of 2013 an administrative decision of a general nature in which they state that they avail of said transition period, which must be published in the Secop.

3. **Transition of the contracting processes in progress.** Independent of whether or not the state's entity considered necessary to carry on applying Decree 734 of 2012 until the 31st of December of 2013, in the selection processes in progress in which the opening act of opening of the contracting process has been issued or, in the competition based on merits, when the act of formation of the prequalification list has been issued, the state's entity must continue the contracting process with the regulations in force at the time in which it enacted the act of opening of the contracting process or the act of formation of the prequalification list.
4. **Verification of the enabling requirements.** The state's entities who carry out their contracting processes utilizing the enabling requirements established in article 10 of this decree, before the chambers of commerce are able to receive the renewals utilizing the goods and services' classifier, must verify in a direct manner that the offerors meet them.

**ART. 163 — Repeals.** This decree repeals Decree 734 of 2012 and Decree 1397 of 2012.

To be published and complied with

Given at Bogotá, D.C., on the 17th of July of 2013.

