

**DECREE 4170 OF 2011
(November 03)**

**Whereby the National Public procurement Agency – Colombia Compra Eficiente – is created,
and its objectives and structure are determined**

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,

**pursuant to the extraordinary powers given to him by items d), e) and f) of article 18 of law
1444 of 2011, and**

WITNESSETH:

Whereas, the county needs to generate a clear and unified policy regarding public purchases and procurement, with guidelines that can guide the public managers on the management and execution of resources, that allows their institutional performance to be measured, monitored and assessed and that generates a greater transparency in the public purchases and procurement.

Whereas, aware of that need, the basis of the 2010 – 2014 National Development Plan, "Prosperity for All", acknowledge the necessity to have an institution governing the public procurement performance to promote, articulate, implement, and makes the follow - up required of the policies that guide the state's activity, to provide management tools to that activity and in that way to cooperate in an active manner to the mitigation of the risk of corruption in the investment of the public funds.

Whereas, even though there is a Public Procurement Inter - Sector Commission, created by Decree 3620 of 2004, the objectives of which are: to be the scenario to prepare and discuss the regulatory decrees to be issued by the President of the Republic in order to ensure the coherence, the coordination and the execution of the policies regarding public procurement; to guide the contractual performance of the public entities towards the reduction of the costs of its operation; to strengthen the scenarios of transparency and visibility of the public contractual activity; to formulate parameters for the adequate public contractual management; to strengthen the contractual planning of the entities starting from the evaluation and monitoring of the contractual performance by indicators and to define parameters of implementation of the Electronic Contracting Integral System, the same lacks of the structure and institutional character, as well as of the tools that allow it to and of the meet the aforementioned needs.

Whereas, by virtue of the foregoing, it is necessary to create a specialized technical entity in charge of promoting policies, standards and of unifying processes in the subject of public purchases and procurement, to prepare and enter into the prices' master agreements the subject matter of article 2 of law 1150 of 2007 and to articulate the participants of the public purchases and procurement processes, in order to optimize the resources of the State, to make coherent the organization and operation of the Public Administration to achieve a greater social profitability in the use of the public resources.

Whereas, items e) and f) of article 18 of law 1444 of 2011 give extraordinary powers to the President of the Republic to create entities of the Executive Branch of the National Level and to determine its objectives and structure, which will be exercised of the creation of the Special Administrative Unit



called National Public Procurement Agency – Colombia Compra Eficiente – and which will also be exercised through other supplementary decrees.

Whereas, item d) of article 18 of law 1444 of 2011 grants extraordinary powers to the President of the Republic to reallocate functions and organic competences between the entities and bodies of the national public administration and between them and other entities and bodies of the State, power that will be exercised to reassign to the National Public procurement Agency – Colombia Compra Eficiente – the function of managing the Public Procurement Electronic System (SECOP), and which may also be exercised through other supplementary decrees.

DECREES:

CHAPTER I

Creation, Objectives, Functions, Resources

Article 1 - Creation of the Special Administrative Unit National Public procurement Agency – Colombia Compra Eficiente –. The Special Administrative Unit called National Public procurement Agency – Colombia Compra Eficiente – is hereby created as a decentralized entity of the Executive Branch of the national level, with legal capacity, its own equity and administrative and financial autonomy, attached to the National Planning Department.

Paragraph. The seat of the Special Administrative Unit called National Public procurement Agency – Colombia Compra Eficiente – will be the ciudad of Bogotá, D. C.

Article 2 - Objective of the National Public procurement Agency – Colombia Compra Eficiente –. The objective of the National Public procurement Agency – Colombia Compra Eficiente –, as governing entity, is to develop and promote public policies and tools aimed to the organization and articulation of the participants in the public purchases and procurement processes, in order to achieve a greater efficiency, transparency and optimization of the resources of the State.

Article 3 - Functions. The following will be the functions of the National Public procurement Agency – Colombia Compra Eficiente:

1. To propose to the National Government the public policies, plans, programs and standards regarding public purchases and procurement seeking the effectiveness between the offer and the demand in the marketplace as well as regulatory rationalization criteria, in order to achieve a greater efficiency, transparency and optimization of the resources of the State.
2. To develop, implement and spread the public policies, plans, programs, standards, instruments and tools to facilitate the public purchases and procurement of the State and that promote the best practices, the efficiency, transparency and competitiveness thereof, so the principles and general that must govern the contractual activity of the public entities are met.
3. To coordinate with the other public entities the arrangements necessary for the compliance with the Agency's objective.
4. To make studies, diagnosis, statistics regarding purchases and procurement with resources of the State, seeking the effectiveness between the offer and the demand in the public purchases and procurement market.
5. To answer queries about the application of provisions of a general nature and to issue external circular letters regarding public purchases and procurement.



6. To support the National Government in international negotiations regarding public purchases and procurement.
7. To design, organize and enter into the prices' master agreements and all other mechanisms of aggregation of the demand the subject matter of article 2 of law 1150 of 2007, according to the procedures established for such purposes.
8. To develop and manage the Public Procurement Electronic System (SECOP) or the one that takes its place, and manage new technological developments in the issues of its competence, taking into account the parameters established by the Management Board.
9. To develop mechanisms for the support of the bidders that allow them a greater and better participation in the of public purchases and procurement processes of the State's entities.
10. To spread the provisions, standards, procedures, technologic media and better practices for the public purchases and procurement; and to promote and carry out, with the support and coordination of other public entities the purpose of which so allows, the training that it deems as necessary, in order to guide the participants through the contractual process.
11. To give support to the territorial entities for the adequate application of the policies, instruments and tools regarding public purchases and procurement.
12. All other functions assigned that correspond to the nature of the entity.

Article 4 - Equity and funds. The funds of the National Public procurement Agency – Colombia Compra Eficiente –, will be made up by:

1. Those assigned to it in the General Budget of the Nation.
2. The funds the subject matter of the second paragraph of the third article of law 1150 del 2007 for the operation of the SECOP.
3. The goods, rights and resources that it acquires or that are transferred to it at any title by the Nation or the entities decentralized by territory or by services of whatever level.
4. The resources that it receives from national and international technical cooperation.
5. All other sources of funds set forth in the national legislation.

CHAPTER II Direction and Administration

Article 5 - Higher Bodies of direction and administration. The direction and administration of the National Public procurement Agency – Colombia Compra Eficiente – will be in the charge of a General Director and of the Management Board.

Article 6 - Management Board. The National Public procurement Agency – Colombia Compra Eficiente – shall have a Management Board, the members of which shall be:

1. The Director of National Planning Department or his / her delegate, who will be the Chairman.
2. The Minister of Finance and Public Credit or his / her delegate.
3. The Information Technologies and Communications' Minister or his / her delegate.
4. The Minister of Trade, Industry and Tourism or his / her delegate.
5. The Transport Minister or his / her delegate.
6. The Director del Administrative Department of the Public Function or his / her delegate.
7. A representative of the President of the Republic.

The General Director of the National Public procurement Agency will attend with voice, but without vote.



Article 7 - Functions of the Management Board of the National Public procurement Agency – Colombia Compra Eficiente – The following are functions of Management Board:

1. To formulate, after a proposal is made by the General Director, the policy and general strategy of the entity, the administrative development plan and the plans and programs.
2. To formulate, after a proposal is made by the General Director, the Agency's continuous improvement policy, as well as the programs aimed to guarantee the administrative development proposed by the General Director.
3. To approve the general management policy of the Public Procurement Electronic System and the contracting of the technological systems or developments thereof that may be required, and their corresponding evaluation that facilitates the interaction of the participants, the objective selection, the transparency and the efficacy.
4. To see to the coordination between the entities of the State for the adequate implementation of the policies and tools that constitute the Agency's objective.
5. To establish the parameters that must be followed by the public entities for the optimization and the efficient use of the public resources involved in the procurement, in harmony with the commissions created by Law 1474 of 2011, in matters within its competence.
6. To design the methodologies of normalization of the entities' procurement processes and procedures, in order to make them more expeditious and to streamline them, to reduce the transaction costs and to satisfy in a timely manner the public demand of goods and services.
7. To know the semi – annual execution evaluations submitted by the Agency's management.
8. To establish the criteria for the training of the public officers pursuant to the efficiency and the transparency of the public purchases and procurement processes.
9. To propose to the National Government the modifications of the structure and staff of the Agency.
10. To approve the Agency's budget project.
11. To adopt and amend its own regulations.
12. All other that may be assigned to it.

Article 8 - General Direction. The General Director will be a free appointment and removal officer, appointed by the President of the Republic.

CHAPTER. III Structure and functions of the National Public procurement Agency – Colombia Compra Eficiente –.

Article 9 - Structure. The structure of the National Public procurement Agency – Colombia Compra Eficiente –, will be as follows

1. Office of the General Director
 - 1.1 Office of the Assistant Director for Contractual performance
 - 1.2. Office of the Businesses' Assistant Director
 - 1.3. Office of the Assistant Director for Information and Technologic Development.
2. General Secretary.

Article 10. Functions of the Office of the General Director. The functions of the Office of the General Director are the following:

1. To bring to the consideration del Management Board, the general policy of the Agency and, once adopted by it, to issue the administrative acts for their execution and see to their compliance.
2. To propose the strategic plan of the entity and the plans and programs necessary for the compliance with the objectives of the Agency and submit them to the Board for its approval.



3. To enter into the prices' master agreements and all other mechanisms of aggregation of demand, the subject matter of article 2 of law 1150 of 2007, according to the procedures established for those purposes.
4. To discharge the legal representation of the Agency.
5. To submit to the Management Board the Agency's continuous improvement policy, as well as the programs aimed to guarantee the administrative development proposed, as well as the performance indicators that allow measuring the satisfaction of the bidders and of the State's entities regarding the compliance with the Agency's objectives.
6. To lead the creation, implementation and diffusion of instruments and tools to facilitate the public purchases and procurement of the State and that promote the efficiency and competitiveness thereof.
7. To organize and articulate with the other State's entities the adequate and uniform implementation of the policies and tools regarding public purchases and procurement that constitute the main objective of the Agency.
8. To lead studies, diagnostics, statistics regarding procurement with the State's funds, pursuing the effectiveness between the offer and the demand in the public purchases and procurement market.
9. To adopt the internal rules necessary for the functioning of the Agency.
10. To present the budget project of the National Public procurement Agency and its amendments for the approval of the Management Board.
11. To exercise the faculty to nominate the personnel of the Agency, with the exception of powers granted to other authorities.
12. To exercise the function of internal disciplinary control in the terms of law 734 of 2002 as amended or replaced from time to time.
13. To enact external circular letters regarding public purchases and procurement.
14. To order the expenses, to enact the administrative acts, to carry out the operations required and to enter into the contracts, agreements and commitments that may be required to ensure the compliance with the functions and objectives of the Agency.
15. To appoint agents or attorneys to represent the Agency in judicial matters and other litigation issues.
16. To create, organize and establish committees, commissions and internal work groups, taking the internal structure into account, as well as the needs of the service and the planes and programs set for the adequate functioning of the Agency.
17. To ensure the exercise of the internal control and to supervise its effectiveness and the observance of its recommendations.
18. To implement, maintain and improve the institutional performance integrated system.
19. All other functions that are allocated to it d.

Article 11. Office of the Assistant Director for Contractual performance. The following are functions of the Office of the Assistant Director for Contractual performance:

1. To define the technical, conceptual and methodological guidelines for the consolidation of a public purchases and procurement system.
2. To make studies that are useful to the National Government for the formulation, adoption and direction of the policy related to public purchasing and procurement.
3. To propose mechanisms for the coordination with the other State's entities for the compliance with the Agency's objectives.
4. To prepare law or decree projects to be proposed to the National Government and of external circulars to be enacted by the General Director, regarding public purchasing and procurement.



5. To compile the legal provisions, concepts, jurisprudence and literature related to the public purchases and procurement and the activity of the Agency, and to see to their unification, update and application.
6. To spread the provisions, rules, procedures, technologic means and best practices for the public purchases and procurement; and to promote the training that it deems as necessary in order to fin guide the participants in the public purchases and procurement processes with the support of the other pertinent dependencies and entities.
7. To propose, to the pertinent instances, criteria for the identification of the occupational profiles and labor competencies of the servants in charge of complying with the functions related to of public purchases and procurement.
8. To respond queries about the application of standards of a general nature.
9. To make and spread instruments and tools that facilitate the public purchases and procurement of the State and that promote the best practices, the efficiency, transparency and competitiveness thereof.
10. To support the Direction in the development of mechanisms for the support to the bidders that allow them a greater and better participation in the processes of public purchases and procurement of the State's entities, within the framework of their competencies.
11. To support the territorial entities in the application of the policies, instruments and tools related to public purchases and procurement.
12. To develop and implement standards and template documents for the different stages of the public contractual performance.
13. To support the development and support of the Institutional Performance Integrated System and the observance of the recommendations within the scope of its competition.
14. All other functions assigned to it.

Article 12. Office of the Businesses' Assistant Director. The functions of the Office of the Businesses' Assistant Director are as follows:

1. To carry out market studies and sector analyses as well as analyses and of demand, development and processing of data and information, about public purchases and procurement.
2. To give support to the National Government in the international negotiation in terms of public purchases and procurement policy, and to make the technical documents required for such purposes.
3. To identify and promote mechanisms for the acquisition and aggregation of demand aimed to the efficiency and celerity in the public purchases and procurement, in coordination with the other dependencies.
4. To design, organize and enter into the prices' master agreements and to promote and develop the processes of selection to execute the prices' master agreements and other mechanisms for the aggregation of demand, on the charge of the Agency.
5. To deliver the inputs for the development of the technological instruments derived from the prices' master agreements, and other mechanisms for the aggregation of demand and auctions, on the charge of the Agency.
6. To answer queries of a general nature on issues of competence of the office.
7. To develop mechanisms that allow a greater and better participation of bidders in the processes of public purchases and procurement of the State's entities, within the framework of its competencies.
8. To design parameters that allow the State's entities to adequately define the goods and services of uniform technical conditions and of common usage, to promote the utilization of the auctions and the generation of new support instruments and tools to carry them out.



9. To design and propose policies and tools for the adequate identification of risks of the public procurement and its coverage.
10. To support the development and support of the Institutional Performance Integrated System and the observance of the recommendations within the scope of its competition.
11. All other functions assigned to it.

Article 13. Office of the Assistant Director for Information and Technologic Development. The following are functions of the Office of the Assistant Director for Information and Technologic Development:

1. To make studies, diagnostics, statistical analyses and in general to collect and assess the information about the technological aspects of the public purchases and procurement, and to promote the articulation of the different legal and regulatory aspects in coordination con the Information Technologies and Communications' Ministry.
2. To design and propose the technical bases for the electronic procurement of the public sector.
3. To manage and implement the technological instruments required for the mechanisms of acquisition and of aggregation of demand, including the prices' master agreements and the auctions, among other.
4. To answer queries of a general nature on issues of competence of the office.
5. To develop and implement the technological instruments that facilitate to the bidders a higher and better participation in the public purchases and procurement processes of the State's entities, in coordination with the other dependencies of the Agency.
6. To manage and administer the Public Procurement Electronic System (SECOP), or the one that takes its place.
7. To carry out the activities required for the integration of the SECOP, or of the system that takes its place, with the Sole Business Registry of the Chambers of Commerce, the State Contracting Sole Gazette and the other systems of public contractual performance.
8. To propose mechanisms to articulate the SECOP with the public electronic systems that contain information related to the purpose of the Agency.
9. To carry out the training regarding electronic public procurement with the support of the other pertinent dependencies and entities.
10. To propose strategies that allow to optimize the use of the technology, the information and the communications in the Agency.
11. To implement and maintain the of institutional information systems, the website and to develop the Agency's online government policies.
12. To support the development and support of the Institutional Performance Integrated System and the observance of the recommendations within the scope of its competition.
13. All other functions assigned to it.

Article 14. General Secretary. The following are functions of the General Secretary:

1. To lead, implement and coordinate the legal, contractual, of technical and IT support, administrative, accounting and financial issues of the Agency.
2. To assist the Direction in the determination of the policies, objectives and strategies related to the administration of the Agency.
3. To plan, lead and coordinate the processes related to the administration of goods and services, management of resources and technologic supports required by the Agency.
4. To direct, coordinate, control and assess the activities related to the acquisition, storage, custody, distribution and inventories of the elements, equipment and other goods necessary for the functioning of the Agency, taking care that the relevant regulations in force are complied with.



5. To guide and direct the application of the policies and programs of administration of personnel, social wellbeing, selection, registration and control, training, incentives and development of the human talent, and to direct their management.
6. To make and update the Agency's specific functions and employment competencies' manual of the Agency.
7. To manage the consecution of funds for the performance of the institutional plans, programs and projects.
8. To direct the writing and performance of the Agency's Annual purchases Plan.
9. To present to the Ministry of Finance and Public Credit the Annual Cash Program, according to the financial obligations acquired.
10. To prepare and present the financial statements, budget execution reports and financial assessment of the Agency as well as all other reports and analyses of a financial nature that are requested to the Entity.
11. To prepare and consolidate the Agency's budget project.
12. To make the entity's balance sheet and to present it according to the regulations in force to the Office of the Accountant General of the Nation and the National Planning Department.
13. To coordinate, supervise and control the Agency's documentary management system.
14. To direct, coordinate and follow up the planning, execution and control of the Agency's administrative and financial performance.
15. To see to the due provision of the service to the citizens and to the attention of grievances and complaints made by the citizens regarding the performance of the dependencies or persons that work for the Agency.
16. To coordinate the investigations of a disciplinary nature brought against the officers of the Agency and to solve them in the first instance in the terms of law 734 of 2002.
17. To design the processes of organization, standardization of methods, drafting of job descriptions and all those activities related to the rationalization of processes of the Agency.
18. To make and consolidate the Entity's operations' budget for its inclusion and approval in the entity's General Budget.
19. To track the correct execution, accounting and rendering of fiscal, budgetary and accounting accounts, of the resources allocated to the Agency.
20. To coordinate the defense or to represent the Agency before the judicial, extra – judicial and administrative forums in the different proceedings in progress, by means of power of attorney or delegation and to supervise the management thereof.
21. To carry out all activities aimed to obtain the effective collection of the sums owed to the Agency, for whatever reason, carrying out the persuasive collection activities, and otherwise pursuing the executive proceedings by coercive jurisdiction for these purposes.
22. To support the development and support of the Institutional Performance Integrated System and the observance of the recommendations within the scope of its competition.
23. All other functions assigned to it.

CHAPTER. III Final Provisions

Article 15. Adoption of Staff. The National Government, pursuant to its constitutional and legal competencies, will proceed to adopt the staff of the Agency, according to the structure established in this decree.



The general administrative career régime for the classification and administration of personal will be applied to the Agency's employees.

Transitory Paragraph - The certificate of budgetary availability to fill the positions of General Director and General Secretary of the National Public procurement Agency – Colombia Compra Eficiente – will be issued by the National Planning Department.

Article 16. Contracts and Agreements in Force. The contracts and agreements currently in force entered into by the Information Technologies and Communications' Ministry and / or the National Planning Department for the development and administration of the Public Procurement Electronic System (SECOP), are deemed as subrogated to the National Public procurement Agency – Colombia Compra Eficiente) by operation of law, and it will continue with their execution in the same terms and conditions.

Article 17. Transference of Files. The National Planning Department and/or the Information Technologies and Communications' Ministry will transfer to the National Public procurement Agency – Colombia Compra Eficiente –, the files that due to their nature are related to the Agency's competencies, within the first two months of operation thereof, in the terms determined by the legal representatives through the General Secretaries' Offices.

Article 18. Transfer of goods, rights and obligations. The ownership of the chattels and real estate of which titular the National Planning Department or the Information Technologies and Communications' Ministry on the date of enforcement of this decree that are related to the functions of the National Public procurement Agency – Colombia Compra Eficiente –, or that are required for the compliance with the Agency's functions, will be held by the National Public procurement Agency – Colombia Compra Eficiente –, and will be ceded to it free of charge. The determination of the goods, the terms and provisions for the delivery thereof will be determined in the minutes entered into by the legal representatives of each one of the entities, which will be registered in the respective registration office as the case may be.

Article 19. Regulatory References. The references made by the regulations in force to the National Planning Department (DNP) and to the Information Technologies and Communications' Ministry that are related to the functions expressed in this decree, must be deemed as referred to the National Public procurement Agency – Colombia Compra Eficiente –

Article 20. Validity and Repeals. This decree is in force as from the date of its publication and it repeals all the provisions that are contrary to it, in particular Decrees 3620 of 2004, 485 of 2009, 2430 of 2011 and the articles 3 and 4 of Decree 3485 of 2011.

