

Circular No 3 of the 16th of August of 2013

To: State Entities

Subject: Application of the Electoral Guarantees' Law

The National Public Procurement Agency -Colombia Compra Eficiente- pursuant to its purpose as the governing body of the public purchasing and procurement system, hereby establishes the guideline to comply with the restrictions to public procurement established by Law 996 of 2005 (hereinafter. the "Guarantees' Law").

1. Restriction during the electoral campaign to elect President and Vice - President

Article 33 of the Guarantees' Law establishes the prohibition to carry out direct contracting during the four (4) months prior to the president's election and up to the date on which the President of the Republic is elected. The article establishes exceptions for the contracts related to the defense and the safety of the State, public credit and those required to face emergencies and for the reconstruction of infrastructure affected by terrorist attacks, natural disasters or force majeure events. This prohibition covers all the State's entities, notwithstanding their legal regime, manner of organization or nature, affiliation with one or another of the branches of the public power, or their autonomy.

According to the electoral calendar, the first round of the next presidential elections is on Sunday, the 25th of May of 2014. In consequence, the period of the presidential campaign starts on the 25th of January of 2014 and as from that date, the direct contracting prohibition is in force as per article 33 of the Guarantees' Law.

Article 33 of the Guarantees' Law was declared enforceable by the Constitutional Court, with the condition of having the prohibition applied for the President and the Vice - President as from the date in which a public and written statement of their interest of running for office is made, which must take place no later than six (6) months before the first – round polling date. This prohibition must be exclusively construed for the Administrative Department of the Presidency of the Republic -DAPRE- which is the entity that carries out the procurement for the offices of the President and Vice President. The entities attached to the DAPRE are not part of this restriction because, according to their legal nature, they have administrative autonomy, legal capacity and their own equity or independent capital.

The Guarantees' Law does not establish restrictions for the extensions, amendments or additions, and the assignment of the contracts entered into before the period of the presidential campaign.

2. Restriction during other type of electoral campaigns

The paragraph to article 38 of the Guarantees' Law includes a prohibition to enter into inter – administrative agreements for the execution of public resources for the governors, municipal and / or district Mayors, secretaries, managers and directors of decentralized entities of the municipal, departmental or district level, prohibition applicable during four (4) months prior to the elections,

without specifying the type of elections. The next elections for the Congress of the Republic and Andean Parliament will be on the 9th of March of 2014; in consequence, as from the 9th of November of 2013 the prohibition the subject matter of the paragraph to article 38 of the Guarantees' Law, is applicable to those subject of the regulations.

3. Conclusions

The prohibition that is the subject matter of article 33 of the Guarantees' Law only refers to direct contracting. Therefore, the procurement processes in which the entity selects the contractor through any other selection modality are allowed.

The prohibition for direct contracting because of the presidential elections that will be held on Sunday, the 25th of May of 2014 operates as of the 25th of January of 2014 and until the election of the President of the Republic, for all the entities of the State, notwithstanding their legal regime, manner of organization or nature, affiliation with one or another of the branches of the public power, or their autonomy. It is important to take into account that inter – administrative contracts or agreements are a type of direct contracting.

If in the presidential elections the President or the Vice - President of the Republic is a candidate, the prohibition against direct contracting for the DAPRE starts as of the 25th of November of 2013.

The execution of inter – administrative agreements to execute public funds with governors, municipal and / or district Mayors, secretaries, managers and directors of decentralized entities of the municipal, departmental o district level is forbidden since the 9th of November of 2013 and until the end of the Presidential election campaign.

The extensions, amendments or additions and the assignment of the contracts entered into prior to the period of the presidential campaign are allowed during the campaign according to the applicable provisions, provided that such extensions, amendments or additions and the assignments comply with the principles of planning, transparency and responsibility.

Kind regards,



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General Director

Regulations

Articles 2, 9, 33 and paragraphs 1 to Article 38 of Law 996 de 2005.

Ruling C-1153 de 2005 of the Constitutional Court.

Opinion 1720 of the 17th of February of 2006 of the State Council, reiterated in Opinion 066 of the 10th of June of 2010.

Opinion 407 of the 24th of July of 2013 of the Consultation and Civil Service Chamber of the State Council.

Additional Information of the Guarantees' Law at:

<http://www.colombiacompra.gov.co/sites/default/files/normativas/20130816impactoleydegarantias.pdf>