

**ATTACHMENT**

(Unofficial translation)

(Original text available in Portuguese at [www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2021/lei/L14133.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/lei/L14133.htm))

**LAW NO. 14,133 OF APRIL 1, 2021**

Procurement Process and Administrative  
Contract Law.

**I, THE PRESIDENT OF THE REPUBLIC**, declare that the National Congress decrees and I approve the following Law:

**TITLE I**

**PRELIMINARY PROVISIONS**

**CHAPTER I**

**SCOPE OF APPLICATION OF THIS LAW**

Article 1. This Law establishes general procurement and contracting rules applicable to the direct Public Administration, independent agencies, and public foundations at the federal, state, federal district, and municipal levels, and encompasses:

I – the bodies of the Legislative and Judiciary Branches of the Federal Government, the States, and the Federal District, and the bodies of the Legislative Branch of the Municipalities, when performing their administrative duties;

II – special funds and other entities directly or indirectly controlled by the Public Administration.

Paragraph 1. Public companies, mixed-economy societies, and their subsidiaries, governed by Law No. 13,303 of June 30, 2016, are not subject to this Law, except as provided for in article 178 of this Law.

Paragraph 2. Contracting by government agencies headquartered abroad shall follow the local peculiarities and the basic principles established in this Law, pursuant to specific regulations to be issued by a Minister of State.

Paragraph 3. In procurement processes and contracting involving funds arising from a loan or donation by an official international cooperation agency or financial entities of which Brazil is a member, the following may be admitted:

I – conditions resulting from international agreements approved by the National Congress and ratified by the President of the Republic;

II – conditions peculiar to the selection and contracting included in rules and procedures of the agencies or entities, provided that:

- a) they are required to obtain the loan or donation;
- b) they do not conflict with the prevailing constitutional principles;
- c) they are indicated in the corresponding loan or donation agreement and have received a favorable opinion by the legal advisor of the contracting party taking out the loan prior to the execution of such agreement;
- d) (VETOED).

Paragraph 4. The documentation forwarded to the Federal Senate for authorization of the loan referred to in paragraph 3 of this article shall refer to the contractual conditions applicable in the cases of such paragraph.

Paragraph 5. Contracting for the direct and indirect management of the Country's international reserves, including those for services related or ancillary to that activity, shall be governed by a regulation exclusive of the Central Bank of Brazil, in compliance with the principles established in the chapeau of article 37 of the Brazilian Federal Constitution.

Article 2. This Law applies to:

I – disposal and concession of right in rem to use properties;

II – purchase, including on a custom-made basis;

III – rental;

IV – concession and permission to use public properties;

V – provision of services, including specialized technical and professional services;

VI – architectural and engineering works and services;

VII – information and communication technology contracting.

Article 3. The following are not subject to this Law:

I – contracts whose subject matters are national or international credit transactions and government debt management, including contracting of financial agents and the provision of guarantees under these contracts;

II – contracting subject to rules provided for in specific laws and regulations.

Article 4. The provisions of articles 42 to 49 of Complementary Law No. 123 of December 14, 2006 apply to the procurement processes and contracts governed by this Law.

Paragraph 1. The provisions referred to in the chapeau of this article do not apply:

I – in case of a procurement process for the acquisition of goods or contracting of services in general, to the item whose estimated price is higher than the maximum gross revenue accepted for purposes of classification as a small-sized company;

II – in case of contracting of engineering works and services, to procurement processes whose estimated amounts are higher than the maximum gross revenue accepted for purposes of classification as a small-sized company;

Paragraph 2. The benefits referred to in the chapeau of this article are hereby limited to micro-enterprises and small-sized companies that, in the calendar year in which the procurement process occurs, have not yet entered into contracts with the Public Administration whose aggregate amounts exceed the maximum gross revenue accepted for purposes of classification as a small-sized company, and the agency or body shall require from the supplier a statement of compliance with this limit in the procurement process.

Paragraph 3. In contracts effective for more than one (1) year, the annual contract amount shall be taken into account in the application of the limits provided for in paragraphs 1 and 2 of this article.

## CHAPTER II

### PRINCIPLES

Article 5. On the application of this Law, the following principles shall be observed: legality, impersonality, morality, transparency, efficiency, public interest, administrative probity, equity, planning, transparency, efficacy, segregation of duties, motivation, reference to the tender documentation, objective evaluation, legal certainty, reasonability, competitiveness, proportion, agility, economy, and sustainable national development, as well as the provisions in Decree-Law No. 4,657 of September 4, 1942 (Introductory Law on Brazilian Legal Rules).

## CHAPTER III

### DEFINITIONS

Article 6. For purposes of this Law, the following are:

I – body: an operating unit that is part of the structure of the Public Administration;

II – entity: an operating unit which acts as a juridical person;

XI – Public Administration: the direct and indirect administration of the Federal Government, the States, the Federal District and the Municipalities, including entities with legal personality of private law under public control and foundations established or maintained by the government;

IV – Administration: body or entity through which the Public Administration operates;

V – public official: an individual who, as a result of an election, appointment, designation, contracting, or any other form of investiture or bond, has a mandate, position, job, or function in a Public legal entity;

VI – authority: public official provided with decision-making powers;

VII – contracting party: Public legal entity in charge of contracting;

VIII – contracted party: individual or legal entity, or a consortium of legal entities, signatory to a contract with the Administration;

IX – supplier: natural or juridical person, or a consortium of juridical persons, that participates or expresses the intention of participating in a procurement process, being comparable, for purposes of this Law, to the supplier or service provider that, at the request of the Administration, submits a proposal;

X – purchase: acquisition, for consideration, of goods for supply at once or in parts, and delivery in up to thirty (30) days of the supply order is deemed to be immediate;

VII – service: activity or set of activities intended for obtaining a certain intellectual or material value of interest to the Administration;

XII – works: all activities defined, by law, as exclusive of architects and engineers, that imply intervention in the environment through a harmonic set of actions that, together, innovate the physical space of nature or cause material changes to the original characteristics of a property;

XIII – ordinary goods and services: those whose performance and quality standards may be objectively defined in the tender documentation, through typical market specifications;

XIV – special goods and services: those that, for their high heterogeneity or complexity, may not be described pursuant to item XIII of the chapeau of this article, and prior justification by the contracting party is required;

XV – continuous services and supplies: services contracted and purchases made by the Public Administration for the maintenance of administrative activities, arising from permanent or long-term needs;

XVI – continuous services with dedicated labor: those whose type of contract performance requires, among others, that:

a) the employees of the contracted party are at the disposal of the contracting party in its premises to provide the services;

b) the contracted party does not use the human resources and materials available from a contracting to simultaneously perform other contracts;

c) the contracted party enables the inspection by the contracting party as to the distribution, control, and supervision of the human resources allocated to its contracts;

XVII – non-continuous services or services under specific scope contracts: those imposing on the contracted party the duty of providing a specific service within a predetermined period, provided that it may be reasonably extended during the term required for completion of the object;

XVIII – specialized technical services of a predominantly intellectual nature: those performed in:

- a) technical studies, planning, basic engineering designs, and detailed engineering designs;
- b) opinions, expert examinations, and general assessments;
- c) technical advice and consulting services and financial and tax audits;
- d) inspection, supervision, and management of works and services;
- e) support or defense of lawsuits or administrative actions;
- f) training and development of personnel;
- g) restoration of works of art and properties of historical value;
- h) quality and technological controls, analyses, field and laboratory tests and trials, instrumentation and monitoring of specific work and environmental parameters, and other engineering services that fall under the definition in this item;

XIX – well-known expertise: quality of a professional or company whose reputation, in their field of expertise, as a result of previous performance, studies, experience, publications, organization, equipment, technical team, or other requirements related to their activities, allows to infer that their work is essential and indisputably the most suitable for full satisfaction of the object of the contract;

XX – preliminary technical study: a document that is an integral part of the first contracting planning stage that defines the public interest involved and its best solution, and also supports the preliminary design, the terms of reference, or the basic engineering design to be prepared in case the contracting is deemed feasible;

XXI – engineering service: every activity or set of activities intended to obtain a certain intellectual or material value of interest to the Administration and that, as they do not fall under the concept of work referred to in item XII of the chapeau of this article, are established, by law, as exclusive to architects, engineers, or specialized technicians, which include:

- a) ordinary engineering service: all engineering services which subject matter are actions (objectively standardized in terms of performance and quality) of maintenance, adequacy, and adaptation of personal and real properties, with preservation of the original characteristics of the properties;
- b) special engineering service: one that, for its high heterogeneity or complexity, may not fall under the definition in sub-item “a” of this item;

XXII – major works, services, and supplies: those whose estimated amount exceeds two hundred million Reais (BRL200,000,000.00);

XXIII – terms of reference: a document required for the contracting of goods and services that shall include the following parameters and descriptive elements:

- a) definition of the object, including its nature, the quantitative data, the contract term, and, as the case may be, the possibility of extension;
- b) reasons for the contracting, which consists in the reference to the corresponding preliminary technical studies or, whenever it is not possible to disclose these studies, in the summary of the parts that do not contain any confidential information;
- c) description of the solution as a whole, considering the entire life cycle of the object;
- d) contracting requirements;
- e) form of execution of the object, which consists in the definition of how the contract shall produce the intended results from its beginning to its conclusion;
- f) contract management model, which describes how the execution of the object shall be monitored and inspected by the body or entity;
- g) measurement and payment criteria;
- h) means and criteria for selecting the supplier;
- i) contracting amount estimates, accompanied by reference unit prices, calculation charts, and supporting documents, with the parameters used to obtain the prices and the respective calculations, parameters which shall be in a separate and classified document;
- j) budget adequacy;

XXIV – preliminary design: a technical document containing all necessary information to support the drafting of the basic project, which shall include, at least, the following elements:

- a) demonstration and justification of the program of needs, assessment of the target audience's demand, social, technical, and economic reasons for the development, global view of the investments, and definitions related to the desired service level;
- b) stability, safety, and durability conditions;
- c) delivery time;
- d) aesthetics of the architectural design, geometric layout, and/or design of the area of influence, when applicable;
- e) metrics for adjustment to the public interest, economy in the use, easy execution, environmental impacts, and accessibility;

- f) proposal for the works or engineering service concept;
- g) previous designs or preliminary studies supporting the concept adopted;
- h) topographic and registration survey;
- i) drilling opinions;
- j) specifications of the elements of the building, construction components, and building materials, in order to establish minimum standards for the contracting;

XXV – basic engineering design: a set of necessary and sufficient elements, with the level of accuracy suitable for defining and sizing the works or services, or the group of works or services object of the procurement process, prepared based on the indications of preliminary technical studies ensuring the technical feasibility and proper treatment of the environmental impacts of the development, and enabling assessment of the cost of the works and definition of the execution methods and time. It shall include the following elements:

- a) topographical and registration surveys, geotechnical drillings and tests, laboratory tests and analyses, social and environmental studies, and other information and surveys required for implementation of the elected solution;
- b) global and local technical solutions in sufficient detail as to avoid, upon drafting of the detailed engineering design and execution of the works and building, the need for reformulations or variants regarding the initially defined quality, price, and deadline;
- c) identification of the types of services to be performed and materials and equipment to be incorporated into the works, as well as their specifications, ensuring the best results for the development and the safe execution while using the object for its intended purposes, provided the identifiable risks and hazards, without interfering with the competitive nature of the process;
- d) information that enables the study and definition of construction methods, temporary facilities, and organizational conditions for the works, without interfering with the competitive nature of the process;
- e) information to support the preparation of the procurement and management plan for the works, encompassing its program, supply strategy, inspection rules, and other information as required in each case;
- f) detailed budget of the total cost for the works, supported by properly evaluated quantitative service and supply data, mandatory exclusively for the execution arrangements provided for in items I, II, III, IV, and VII of the chapeau of article 46 of this Law;

XXVI – detailed engineering design: a set of elements necessary and sufficient to the full execution of the works, with details of the solutions provided for in the basic engineering design, the identification of services, materials, and equipment to be incorporated into the works, as well as their technical specifications, according to the relevant technical standards;

XXVII – risk matrix: contract clause defining the risks and responsibilities between the parties and characterizing the initial economic and financial balance of the contract, in terms of the financial

burden arising from supervening events after the contracting, containing, at least, the following information:

- a) list of possible supervening events after execution of the contract that may cause an impact on its economic and financial balance and an expected need for an addendum due to its occurrence;
- b) in case obligations of result, the definition of the fractions of the object concerning which the contracted parties shall be free to innovate in methodological or technological solutions, in terms of modifying the predefined solutions in the preliminary design or the basic engineering design;
- c) in case of obligations of conduct, accurate definition of the fractions of the object concerning which the contracted parties shall not be free to innovate in the methodological or technological solutions, and there shall be an obligation to execute the object in accordance with the predefined solution in the preliminary design or basic engineering design, taking into account the characteristics of the contractual arrangement for execution of the engineering works and services;

XXVIII – unit price contract: contracting for the execution of the works or service for a fixed price per certain units;

XXIX – turnkey contract: contracting for the execution of the work or service for a total fixed price;

XXX – EPC contract: contracting of a development in full, including all stages of the necessary works, services, and facilities, under the full responsibility of the contracted party until delivery to the contracting party in operating conditions, with the characteristics suitable for the purposes for which it was contracted and meeting the technical and legal requirements for use in structural and operational safety conditions;

XXXI – task contract: contracting regime for workforce for small works for a fixed price, with or without the supply of materials;

XXXII – integrated contract: contracting regime for engineering works and services in which the contracted party is responsible for preparing and developing the basic and detailed engineering designs, executing engineering works and services, providing goods or special services, and assembling, testing, conducting the pre-start-up, and all other transactions necessary and sufficient for final delivery of the object;

XXXII – semi-integrated contract: contracting regime for engineering works and services in which the contracted party is responsible for preparing and developing the detailed engineering design, executing engineering works and services, providing goods or special services, and assembling, testing, conducting the pre-start-up, and all other transactions necessary and sufficient for final delivery of the object;

XXXIV – supply and provision of related services: contracting regime in which, in addition to supplying the object, the contracted party undertakes responsibility for its operation, maintenance, or both, for a definite term;

XXXV – international procurement process: a procurement process carried out in the national territory in which the participation of foreign suppliers is admitted, with the possibility of quoting

prices in foreign currencies, or a procurement process in which the object of the contract may or must be executed in whole or in part in foreign territory;

XVIII – national service: service provided in the national territory, under the conditions established by the Federal Government;

XXXVII – national manufactured product: manufactured product produced in the national territory pursuant to the basic production process or with the origin rules established by the Federal Government;

XXXVIII – competitive procurement: procurement method for the contracting of special goods and services and ordinary and special engineering works and services which evaluation criterion may be:

- a) the lowest price;
- b) the best technique or artistic content;
- c) technique and price;
- d) the highest economic return;
- e) the highest discount;

XXXIX – contest: procurement method for choosing a technical, scientific, or artistic work, which evaluation criterion shall be the best technique or artistic content, and for granting an award or compensation to the winner;

XL – auction: procurement method for disposal of real properties or personal properties that are unusable or were legally seized to whoever provides the highest bid;

XLI – reverse auction: mandatory procurement method for acquisition of ordinary goods and services which evaluation criterion may be the lowest price or the highest discount;

XLII – competitive dialogue: procurement method for the contracting of works, services, and purchases in which the Public Administration dialogues with suppliers that were previously selected using objective criteria, in order to develop one or more alternatives capable of meeting its needs, and the suppliers shall submit a final proposal after the end of the dialogues;

XLIII – registration: an administrative process of public call in which the Public Administration calls those interested in providing services or supplying goods so that, after meeting certain requirements, they register with the body or entity to execute the object when called;

XLIV – pre-qualification: selection procedure, prior to the procurement process, called by means of tender documentation, intended for analysis of the full or partial qualification of the interested parties or the object;

XLV – price registration system: a set of procedures for formal registration, through a direct award or procurement process on a reverse auction or competition basis, of prices related to the provision of services, works, and acquisition and rental of properties for future contracting;

XLVI – tender proposal: a binding and irrevocable document representing a commitment for future contracting, in which the object, prices, suppliers, participating entities, and conditions are proposed, according to the provisions in the tender documentation, the notice or direct award contracting, and the proposals submitted;

XLVII – managing body or entity: Public agency or entity responsible for the set of tender proposal procedures and the management of the tender proposals arising therefrom;

XLVIII – participating body or entity: Public body or entity that participates in the initial tender proposal procedures and is an integral part of the tender proposal;

XLIX – non-participating body or entity: a Public body or entity that does not participate in the initial procedures of the procurement process for price proposal and is not an integral part of the tender proposal;

L – contracting commission: a group of public officials appointed by the Administration, on a permanent or special basis, with the duties of receiving, examining, and evaluating documents related to the procurement processes and any ancillary procedures;

LI – electronic catalog for standardization of purchases, services, and works: a centralized, computerized pricing system created to enable the standardization of items to be purchased by the Public Administration that will be available for the procurement process;

LII – official website: a website digitally certified by a certificate authority, in which the federated state discloses, in a centralized manner, the information and services of digital governance of its agencies and entities;

LIII – efficiency contract: contract the subject matter of which is the provision of services, which may include the execution of works and the supply of goods, to provide the contracting party with savings by reducing current expenses, and the contract is remunerated based on the percentage savings generated;

LIV – performance bond: a bond that ensures the faithful performance of the obligations undertaken by the contracted party;

LV – research and development products: goods, inputs, services, and works required for scientific and technological research, development of technology or technological innovation, detailed in a research project;

LVI – overpricing: when the prices budgeted for the procurement process or contracted at an amount significantly higher than reference market prices, whether for only one (1) item, if the procurement process or the contracting is for unit service prices, or the total price of the object if the procurement process or the contracting is a task, turnkey, EPC, semi-integrated, or integrated contract;

LVII – overbilling: damage caused to the Administration assets, characterized, among other situations, by:

- a) measurement of amounts greater than those effectively executed or provided;

- b) deficiency in the execution of engineering works and services resulting in a decrease in the quality, useful life, or safety;
- c) changes in the budget for engineering works and services that cause an economic and financial imbalance of the contract in favor of the contracted party;
- d) other amendments to financial covenants causing early contract payments, distortion of the construction and financial schedule, an unreasonable extension of the term of the contract entailing additional costs for the Administration or illicit price adjustments;

LVIII – strict adjustment: a way of maintaining the economic and financial balance of a contract consisting in the application of the inflation adjustment index set forth in the contract, which shall represent the effective variance of the production cost, and specific or sector indexes may be adopted;

LIX – renegotiation: a way of maintaining the economic and financial balance of a contract used for continuous services with dedicated labor or predominance of labor through the analysis of the variation in contractual costs, which shall be provided for in the tender documentation with reference to the date of submission of proposals, for market costs, and with reference to the date of the agreement, the collective bargaining agreement, or collectively agreed wage rate increase to which the budget is bound, for labor costs;

LX – contracting agent: a person designated by the competent authority, from permanent civil servants or public employees from the permanent Public staff, to make decisions, follow up on the procurement process, promote the procurement process, and develop any other activities required for the good progress of the procurement process until its homologation.

## CHAPTER IV PUBLIC OFFICIALS

Article 7. The highest authority of the body or entity, or the person indicated by the administrative organization rules, shall be responsible for promoting management by competencies and designating public officials to perform the functions essential to the performance of this Law that meet the following requirements:

- I – are, preferably, permanent civil servants or public employees of the permanent Public staff;
- II – have duties related to procurement processes and contracts, or have compatible education or qualification attested by a professional certificate issued by a school of government created and maintained by the Government; and
- III – are not a spouse or partner of regular suppliers or contractors of the Administration, or have any kinship bond, whether collateral or by affinity, until the third degree, or any technical, commercial, economic, financial, labor, and civil relationship with them.

Paragraph 1. The authority referred to in the chapeau of this article shall observe the principle of segregation of duties, and the same public official may not be designed for simultaneous duties more susceptible to risks, in order to reduce the possibility to conceal mistakes and the events of fraud under the relevant contracting.

Paragraph 2. The provisions in the chapeau and paragraph 1 of this article, including the requirements made, also apply to Public legal assistance and internal control entities.

Article 8. The procurement process shall be carried out by a contracting agent, a person designated by the competent authority, from permanent civil servants or public employees from the permanent Public staff, to make decisions, follow up on the procurement process, promote the procurement process, and develop any other activities required for the good progress of the procurement process until its homologation.

Paragraph 1. The contracting agent shall count on the help of a support team and shall be individually liable for the acts he/she performs, except when he/she is misled by the actions of the team.

Paragraph 2. In a procurement process involving special goods or services, provided that the requirements established in article 7 of this Law are met, the contracting agent may be replaced by a contracting commission formed by at least three (3) members, who shall be jointly liable for all acts performed by the commission, except for any member who expresses a conflicting individual position justified and recorded in minutes drawn up during the meeting in which the decision has been taken.

Paragraph 3. The rules related to the actions of the contracting agent and of the support team, to the operation of the contracting commission, and to the actions of contract inspectors and managers referred to in this Law shall be established in regulation, and the possibility for them to count on the support of the legal assistance and internal control entities to perform the duties essential to the provisions of this Law shall be provided for.

Paragraph 4. In a procurement process involving special goods or services the subject matter of which is not routinely contracted by the Administration, a service provided by a company or a specialized professional to assist the public officials responsible for carrying out the procurement process may be contracted for a definite term.

Paragraph 5. In a procurement process on a reverse auction basis, the official responsible for carrying out the procurement process shall be referred to as an auctioneer.

Article 9. The public official appointed to act in the area of procurement processes and contracts, except for the cases provided by law, may not:

I – accept, anticipate, include, or tolerate, in his/her acts, situations that:

- a) compromise, restrict, or frustrate the competitive nature of the procurement process, including in case of participation of cooperatives;
- b) establish preferences or differences based on the place of birth, the principal place of business, or the domicile of the suppliers;
- c) are not applicable or are irrelevant to the specific object of the contract;

II – establish a differentiated commercial, legal, labor, or social-security treatment between Brazilian and foreign companies, including with respect to currency, method, and place of payments, even when credit facilities provided by international agencies are involved;

III – offer unreasonable resistance to the progress of the processes and unduly delay or fail to perform a mandatory act, or perform it in violation of an express legal provision.

Paragraph 1. A public official of a supplying or contracting body or entity may not participate directly or indirectly in the procurement process or in the performance of the contract, and the situations that may characterize a conflict of interest in the exercise of the office or position shall be observed, under the laws and regulations regulating the matter.

Paragraph 2. The prohibitions addressed in this article are extended to third parties that help the carrying out of the contract as a member of the support team, a specialized professional, or an employee or representative of a company that provides technical advice.

Article 10. If the competent authorities and the civil servants that participated in the procedures related to the procurement processes and to the contracts under this Law need to defend themselves at the administrative, control, or judicial levels by virtue of an act performed in strict compliance with an instruction included in a legal opinion prepared pursuant to paragraph 1 of article 53 of this Law, the public legal practice shall promote, at the public official's discretion, its judicial or out-of-court representation.

Paragraph 1. The provisions in the chapeau of this article do not apply whenever:

I – (VETOED);

II – evidence of the intentional practice of illegal acts is included in the administrative proceeding or lawsuit.

Paragraph 2. The provisions in the chapeau of this article apply even in case the public official no longer holds the same office, position, or has the same duty as when the act under examination was performed.

## TITLE II

### PROCUREMENT PROCESSES

#### CHAPTER I

#### PROCUREMENT PROCESS

Article 11. The procurement process aims at:

I – ensuring the selection of the proposal capable of delivering the most advantageous result in the contracting for the Public Administration, including in regard to the life cycle of the object;

II – ensuring equal treatment among the suppliers, as well as the fair competition;

III – avoiding overpriced contracting or contracts with clearly unenforceable prices and overbilling in the performance of the contracts;

IV – encouraging innovation and sustainable national development.

Sole paragraph. Top management of the body or entity is responsible for the governance of the contracting and shall implement processes and structures, including those related to risk management and internal controls, to assess, direct, and monitor the procurement processes and the respective contracts, in order to achieve the objectives established in the chapeau of this article, promote an undamaged and reliable environment, ensure alignment of the contracting with the strategic planning and the budget laws, and promote efficiency, effectiveness, and efficacy in its contracting.

Article 12. In the procurement process, the following shall be observed:

I – the documents shall be produced in writing, with the date and location of drafting and signature of the persons responsible;

II – the amounts, prices, and costs used shall have the national currency as monetary expression, except as provided for in article 52 of this Law;

III – failure to meet requirements that are only formalities and do not jeopardize the assessment of the supplier's qualification or the understanding of the content of its bid shall not exclude the supplier from the procurement process nor invalidate the process;

IV – proof of authenticity of a copy of a public or private document may be produced before an agent of the Administration, by submitting the original document or a declaration of authenticity by an attorney, under its personal responsibility;

V – notarization of signatures shall only be required in case of doubt regarding their authenticity, except in case of legal determination;

VI – the acts shall occur preferably in digital format so that they can be produced, informed, stored, and validated electronically;

VII – based on documents for formalizing the demand, the entities responsible for planning in each federated state may, pursuant to a regulation, prepare an annual contracting plan, aiming at rationalizing the contracting of the agencies and entities under their jurisdiction, ensuring the alignment with their strategic planning, and supporting the preparation of drafting of the respective budget laws.

Paragraph 1. The annual contracting plan referred to in item VII of the chapeau of this article shall be disclosed and maintained available for the public on an official website and shall be observed by the federated state in the carrying out of procurement processes and the performance of the contracts.

Paragraph 2. Identification and digital signature of individuals or legal entities are allowed in electronic means, through a digital certificate issued within the scope of the Brazilian Public Key Infrastructure (ICP-Brasil).

Article 13. The acts performed in the procurement process are public, except in the case of information whose secrecy is essential for the security of the society and of the Government, as provided by law.

Sole paragraph. Disclosure shall be deferred:

I – regarding the content of the proposals, until the respective beginning;

II – regarding the budget of the Administration, pursuant to article 24 of this Law.

Article 14. The following parties may not compete in a procurement process or participate in the performance of a contract, directly or indirectly:

I – the author of the preliminary design, of the basic engineering design, or the detailed engineering design, individual or legal entity, whenever the procurement process is for works, services, or supply of goods related thereto;

II – a company, individually or in a consortium, responsible for preparing the basic engineering design or the detailed engineering design, or a company of which the author of the design is a leader, manager, controller, shareholder, or holder of more than five percent (5%) of the voting capital, the technician in charge or subcontractor, when the procurement is for works, services, or supply of goods necessary thereto;

III – an individual or legal entity that, at the time of the procurement process, is unable to participate in the procurement process as a result of a sanction that has been imposed;

IV – whoever has a technical, commercial, economic, financial, labor, or civil connection with a manager of the contracting body or entity or with a public official who holds a position in the procurement process or who acts in the inspection or management of the contract, or one of their spouses, partners, or relatives, whether it is lineal, collateral, or by affinity, up to the third degree, and such prohibition shall be expressly included in the tender documentation;

V – parent companies, subsidiaries, or affiliates, under Law No. 6,404 of December 15, 1976, competing with each other;

VI – an individual or legal entity that, in the five (5) years preceding the publication of the tender documentation, has been convicted in court, in a final and unappealable decision, for exploitation of child labor, for submission of workers to conditions similar to slavery, or for contracting teenagers in the cases prohibited by the labor laws and regulations.

Paragraph 1. The disqualification referred to in item III of the chapeau of this article shall also apply to the supplier that acts as a replacement for another individual or legal entity, in order to bypass the effectiveness of the sanction imposed thereto, including its parent company, subsidiary, or affiliate, provided that the illegal fact or the fraudulent use of the supplier's legal personality is duly evidenced.

Paragraph 2. At the Administration's discretion and exclusively at its service, the author of the designs and the company referred to in items I and II of the chapeau of this article may participate in the support to the activities related to planning of the contracting, carrying out the procurement process, or managing the contract, provided that it is done under the exclusive supervision of public officials of the body or entity.

Paragraph 3. The companies that form part of the same economic group are regarded as equals to the authors of the design.

Paragraph 4. The provisions in this article do not preclude the procurement process or the contracting of works or services that include as a duty of the contracted party the preparation of the basic engineering design and the detailed engineering design, in the integrated contracting, and of the detailed engineering design, in the other contractual arrangements for execution.

Paragraph 5. The participation in procurement processes and contracting carried out within the scope of projects and programs partially funded by an official international cooperation agency or by an international financial organization with national funds is prohibited for individuals or legal entities that form part of the list of persons sanctioned by such entities or declared disreputable under this Law.

Article 15. Except for any prohibition duly justified in the procurement process, a legal entity may participate in a procurement process in a consortium, pursuant to the following rules:

I – proof of public or private commitment to the creation of the consortium, signed by the consortium members;

II – an indication of the company leading the consortium, which shall be responsible for its representation before the Administration;

III – admission, for purposes of technical qualification, of the aggregate quantitative information provided by each consortium member and, for purposes of economic and financial qualification, of the aggregate amounts of each consortium member;

IV – a company member of a consortium may not participate in the same procurement process through more than one consortium or individually;

V – joint liability of the members by the acts performed by the consortium, both in the procurement stage and during the execution of the contract.

Paragraph 1. The tender documentation shall establish for the consortium an accretion of ten percent (10%) to thirty percent (30%) of the amount required of an individual supplier for economic and financial qualification, except if justified otherwise.

Paragraph 2. The accretion provided for in paragraph 1 of this article does not apply to consortiums entirely formed by micro-enterprises and small companies, as defined by law.

Paragraph 3. The winning supplier is required to promote, before entering into the contract, the establishment and registration of the consortium pursuant to the commitment referred to in item I of the chapeau of this article.

Paragraph 4. Provided that there are technical reasons approved by the competent authority, the tender documentation may establish a maximum limit for the number of companies members of the consortium.

Paragraph 5. The replacement of a consortium member shall be expressly authorized by the contracting body or entity and satisfy the condition related to the evidence that the new company of the consortium has at least the same quantitative information for purposes of technical qualification and the same amounts for purposes of economic and financial qualification of the company replaced

for purposes of qualification of the consortium in the procurement process that gave rise to the contract.

Article 16. The professionals organized under a cooperative may participate in a procurement process when:

I – the organization and operation of the cooperative conform to the rules established in the applicable laws and regulations, in particular, Law No. 5,764 of December 16, 1971, Law No. 12,690 of July 19, 2012, and Complementary Law No. 130 of April 17, 2009;

II – the cooperative has a statement evidencing actions in a cooperative system, with a division of income and expenses among the members;

III – any member of the cooperative, with the same qualification, is capable of performing the contracted object, and the Administration may not appoint specific persons;

IV – the object of the procurement process, in the case of cooperatives governed by Law No. 12,690 of July 19, 2012, refers to specialized services included in the corporate purpose of the cooperative, to be performed complementarily to its operation.

Article 17. The procurement process shall have the following sequential stages:

I – preparatory stage;

II – publication of the tender documentation;

III – submission of proposals and bids, when applicable;

IV – decision;

V – qualification;

VII – appeal stage;

VII – homologation.

Paragraph 1. The stage referred to in item V of the chapeau of this article may, through a justified act defining the resulting benefits, precede the stages referred to in items III and IV of the chapeau of this article, provided that it is expressly provided for in the tender documentation.

Paragraph 2. The procurement processes shall be preferably carried out electronically, and the in-person format may be used, provided that it is justified, and the public session shall be registered in minutes and recorded in audio and video.

Paragraph 3. As long as provided for in the tender documentation, in the stage referred to in item IV of the chapeau of this article, the supplying body or entity may, regarding the provisional winning supplier, perform analysis and assessment of the compliance of the proposal, through homologation of samples, examination of compliance, and proof of reputation, among other tests of interest to the Administration, in order to evidence its adherence to the specifications defined in the terms of reference or the basic engineering design.

Paragraph 4. In electronic procedures, the Administration may determine, as a validity and efficacy condition, that the suppliers perform their acts electronically.

Paragraph 5. In the exceptional event of an in-person procurement process referred to in paragraph 2 of this article, the public session for submission of proposals shall be recorded in audio and video, and the recording shall be attached to the records of the procurement process after its conclusion.

Paragraph 6. The Administration may require certification by an independent organization accredited by the National Institute of Metrology, Standardization and Industrial Quality – Inmetro as a condition for acceptance of:

I – studies, preliminary designs, basic engineering designs, and detailed engineering designs;

II – completion of stages or objects of contracts;

III – material submitted and technical staff presented by a company for purposes of qualification.

## CHAPTER II

### PREPARATORY STAGE

#### Section I

##### **Information on the Procurement Process**

Article 18. The preparatory stage of the procurement process is characterized by planning and shall be consistent with the annual contracting plan referred to in item VII of the chapeau of article 12 of this Law, if any, and with the budget laws, as well as address all technical, market, and management considerations that may interfere with the contracting, including:

I – a description of the need for the contracting supported by a preliminary technical study characterizing the public interest involved;

II – the definition of the object to meet the need, through terms of reference, preliminary design, basic engineering design, or detailed engineering design, as the case may be;

III – the definition of the execution and payment conditions, guarantees required and provided, and receipt conditions;

IV – the estimated budget, including the detailing of the prices used therefor;

V – the preparation of the tender documentation;

VI – the preparation of a draft contract, when necessary, which shall be mandatorily included as an attachment to the tender documentation;

VII – the arrangements for the supply of goods, provision of services, or execution of engineering works and services, with due regard to the potential economies of scale;

VIII – the procurement method, the evaluation criterion, the competition mode, and the adequacy and efficiency of the combination of these parameters, for purposes of selection of the proposal capable of delivering the most beneficial contracting result to the Public Administration, taken into account the entire life cycle of the object;

IX – the detailed reasons for the tender documentation conditions, such as the reasons for the technical qualification requirements, through indication of the parts of higher technical relevance or of a significant amount of the object, and economic and financial qualification requirements, reasons for the criteria used to score and evaluate the technical proposals, for procurement processes with evaluation based on the best technique or technique and price, and reasons for the rules related to the participation of companies in a consortium;

X – analysis of the risks that may compromise the success of the procurement process and the good contract performance;

XI – the justification about the moment of disclosure of the procurement process' budget, with due regard to article 24 of this Law.

Paragraph 1. The preliminary technical study referred to in item I of the chapeau of this article shall evidence the problem to be settled and its best solution, as to allow the assessing of the technical and economic feasibility of the contracting, and shall include the following elements:

I – description of the need for the contracting, taking into account the problem to be settled under the perspective of the public interest;

II – evidence of the contracting as provided for in the annual contracting plan, if any, as to indicate its alignment with the Administration planning;

III – contracting requirements;

IV – estimated amounts for contracting, accompanied by calculation charts and the supporting documents, considering interdependencies with other contracting, as to enable economies of scale;

V – market survey, which consists of the analysis of possible alternatives, and the technical and economic reasons for the choice of the type of solution to be contracted;

VI – estimated contracting amount, accompanied by reference unit prices, calculation charts, and supporting documents, which may be included in a classified attachment, if the Administration chooses to preserve its secrecy until the end of the procurement process;

VII – description of the solution as a whole, including the requirements related to maintenance and technical support, when applicable;

VIII – reasons for the subdivision, or not, of the contracting;

IX – statement of the intended results in terms of economy and better use of the human, material, and financial resources available;

X – measures to be adopted by the Administration prior to the execution of the contract, including regarding the training of civil servants or employees to inspect and manage the contract;

XI – correlated and/or interdependent contracting;

XII – description of potential environmental impacts and corresponding mitigation measures, including requirements of low consumption of energy and other resources, as well as reverse logistics for disposal and recycling of goods and rejects, when applicable;

XIII – final opinion on the adequacy of the contracting to the need for which it is intended.

Paragraph 2. The preliminary technical study shall include at least the elements set forth in items I, IV, VI, VIII, and XIII of paragraph 1 of this article and, when the other elements set forth in such paragraph are not contemplated, it shall present the relevant justifications.

Paragraph 3. For a preliminary technical study for contracting ordinary engineering works and services, if there is no loss in the assessment of the desired performance and quality standards, the object may be specified only in the terms of reference or in the basic engineering design, and no projects are required.

Article 19. The Administration entities with regulatory powers related to the activities of management of materials, works, and services, and procurement processes and contracts shall:

I – establish instruments that enable, preferably, the centralization of the procedures for contracting and purchase of goods and services;

II – create an electronic catalog for standardization of purchases, services, and works, and all federated states may adopt the Federal Government catalog;

III – create a computerized system to monitor the works, including photo and video resources;

IV – create, with the help of legal assistance and internal control entities, forms of draft tender documentation, terms of reference, standard contracts, and other documents, and all federated states may adopt the Federal Government drafts;

V – promote the gradual adoption of integrated technologies and processes that enable the creation, use, and updating of digital models of engineering works and services.

Paragraph 1. The catalog referred to in item II of the chapeau of this article may be used in procurement processes which evaluation criterion is the lowest price or highest discount, and shall contain all documentation and procedures typical of the internal procurement stage, as well as specifications of the respective objects, as provided in the regulations.

Paragraph 2. Failure to use the electronic standardization catalog referred to in item II of the chapeau or the draft forms referred to in item IV of the chapeau of this article shall be justified in writing and attached to the corresponding procurement process.

Paragraph 3. In procurement processes for engineering and architecture works and services, whenever suitable for the object of the procurement, the **Building Information Modelling (BIM)**

shall be preferably adopted, or, if that is not possible, any similar or more advanced technologies and integrated processes that may replace it.

Article 20. The consumption items acquired to meet the demands of the Public structures shall be of ordinary quality, not superior to that necessary to meet the purposes to which they are intended, and the acquisition of luxury items is prohibited.

Paragraph 1. The Executive, Legislative, and Judicial Branches shall define, through regulations, the limits for the classification of consumer goods into the common and luxury categories.

Paragraph 2. After one hundred and eighty (180) days of the enactment of this Law, new purchases of consumer goods may only be effected upon amendment, by the applicable authority, to the regulations referred to in paragraph 1 of this article.

Paragraph 3. (VETOED).

Article 21. The Administration may call, upon a minimum eight (8)-day notice, a public hearing, in person or electronically, about a procurement process that it intends to carry out, with prior availability of relevant information, including a preliminary technical study and elements of the tender documentation, and with the possibility for all interested parties to express themselves.

Sole paragraph. The Administration may also submit the procurement process to prior public consultation, through the provision of its elements to all interested parties, which may make suggestions within the determined term.

Article 22. The tender documentation may include a risk allocation matrix between the contracting party and the contracted party, event in which the calculation of the estimated contracting amount may consider a risk rate consistent with the object of the procurement process and the contracted party's risks, according to the method predefined by the federated state.

Paragraph 1. The matrix referred to in the chapeau of this article shall promote an efficient allocation of the risks of every contract and establish the responsibility of each contracting party, as well as the mechanisms to prevent losses and mitigate their effects in case of any loss during the performance of the contract.

Paragraph 2. The contract shall reflect the risk matrix allocation, especially for:

I – the cases of changes in order to restore the economic and financial balance of the contract when the loss is considered, in the risk matrix, as a cause of imbalance not suffered by the party that intends for the restoration;

II – the possibility of termination when the loss is excessively increased or prevents the continuous performance of the contract;

III – the contracting of mandatory insurance policies as previously defined in the contract, and the contracting cost shall be incorporated into the proposed price.

Paragraph 3. When the contracting refers to major works and services, or the integrated and semi-integrated contracts are adopted, the tender documentation shall mandatorily include a risks allocation matrix between the contracting party and contracted party.

Paragraph 4. For integrated or semi-integrated contracting, the risks arising from supervening facts after execution of the contract related to the choice of the basic design solution by the contracted party shall be allocated as its responsibility in the risk matrix.

Article 23. The previously estimated amount of the contracting shall be consistent with the market, taking into account the prices included in public databases and the quantities to be contracted, with due regard to the potential economies of scale and uniqueness of the place where the object shall be executed.

Paragraph 1. In procurement processes for the acquisition of goods and services in general, pursuant to the applicable regulations, the estimated amount shall be defined based on the best price assessed through the following metrics, whether combined or not:

I – details of the unit costs lower or equal to the median of the corresponding item in the panel for consultation of prices or in the healthcare price database available on the National Public Procurement Portal (PNCP);

II – similar contracting entered into by the Public Administration, in progress or completed within one (1) year before the price research date, including through a price registration system, pursuant to the corresponding price adjustment index;

III – the use of research data published in a specialized media, of a reference table formally approved by the Federal Government, and of specialized websites or general e-commerce websites, as long as they contain the access date and time;

IV – direct research with at least three (3) suppliers, upon formal quotation, as long as the choice for these suppliers is justified and that the quotations have not been obtained more than six (6) months before the date of publication of the tender documentation;

V – search in the Brazilian database of electronic invoices, pursuant to the applicable regulations.

Paragraph 2. In procurement processes for contracting of engineering works and services, pursuant to the applicable regulations, the estimated amount, plus the reference percentage of Benefits and Indirect Expenses (BDI) and the applicable Social Charges (ES), shall be defined through the use of parameters in the following order:

I – details of unit costs lower than or equal to the median of the corresponding item in the Reference Work Cost System (Sicro), for transport infrastructure services and works, or in the Brazilian Search System for Civil Construction Costs and Indexes (Sinapi), for other engineering works and services;

II – use of research data published in a specialized media, of a reference table formally approved by the Federal Government, and of specialized websites or general e-commerce websites, as long as they contain the access date and time;

III – similar contracting entered into by the Public Administration, in progress or completed within one (1) year before the price research date, pursuant to the corresponding price adjustment index;

V – search in the Brazilian database of electronic invoices, pursuant to the applicable regulations.

Paragraph 3. In the contracting entered into by Municipalities, States, and the Federal District, as long as no Federal Government funds are involved, the previously estimated amount for contracting referred to in the chapeau of this article may be defined using other cost systems adopted by the corresponding federated state.

Paragraph 4. For direct contracting due to non-applicability or non-requirement, when is not possible to estimate the object amount as established in paragraphs 1, 2, and 3 of this article, the contracted party shall previously evidence that the prices are consistent with those in similar contracts for analogous objects, through submission of invoices issued to other contracting parties during the period of up to one (1) year before the date of the contract with the Administration, or through another reputable mean.

Paragraph 5. In procurement processes for the contracting of engineering works and services on an integrated or semi-integrated basis, the estimated contracting amount shall be calculated pursuant to paragraph 2 of this article, whether added or not by a risk fee, and, whenever necessary and as allowed by the preliminary design, the estimated price shall be based on a summary quotation obtained using the cost system defined in item I of paragraph 2 of this article, and the use of an expeditious or parametric methodology for approximate assessment based on other similar contracting shall be reserved to fractions of the development that were not sufficiently detailed in the preliminary design.

Paragraph 6. In the case of paragraph 5 of this article, suppliers or contracted parties shall be required, in the quotation composing their respective proposals, at least the same level of detail of the summary quotation referred to in the paragraph.

Article 24. As long as justified, the estimated contracting budget may be confidential, without prejudice to the disclosure of the detailed quantitative data and of other information required for the preparation of the proposals, and, in this case:

I – confidentiality shall not prevail for internal and external control entities;

II – (VETOED).

Sole paragraph. In the event of a procurement process in which the evaluation criterion adopted is the highest discount, the estimated or maximum acceptable price shall appear in the tender documentation.

Article 25. The tender documentation shall include the object of the procurement process and the rules for the call, evaluation, eligibility, appeals, and penalties under the procurement process, for inspection and management of the contract, for delivery of the object, and payment conditions.

Paragraph 1. Whenever allowed by the object, the Administration shall adopt standard draft tender documentation and contract including uniform clauses.

Paragraph 2. As long as there is no prejudice, as demonstrated in the preliminary technical study, to the competitiveness of the procurement process and the efficiency of the corresponding contract, the tender documentation may provide for the use of the workforce, materials, technologies, and raw materials present at the place where the goods, services, or works shall be executed, preserved and operated.

Paragraph 3. All elements of the tender documentation, including draft contract, terms of reference, preliminary design, projects, and other attachments, shall be disclosed on an official website on the same date the tender documentation was published, with no log-in or identification requirements to access them.

Paragraph 4. In contracting for major works, services, and supplies, the tender documentation shall set forth the winning supplier's obligation to implement an integrity program within six (6) months of execution of the contract, pursuant to the applicable regulations that shall provide for the measures to be adopted, the way to evidence performance, and the penalties for failure to perform.

Paragraph 5. The tender documentation may set forth the responsibility of the contracted party for:

- I – obtaining the required environmental permits;
- II – the expropriation, as authorized by the Government.

Paragraph 6. The environmental permits for the engineering goods and services procured and contracted pursuant to this Law shall have priority in the processing by the agencies and entities forming part of the National Environmental System (SISNAMA) and shall be guided by the principles of agility, cooperation, economy, and efficiency.

Paragraph 7. Regardless of the duration of the contract, the tender documentation shall mandatorily provide for a price adjustment index, with a base date linked to the date of the estimated quotation and with the possibility of establishing more than one specific or sector index, according to the market reality of the respective supplies.

Paragraph 8. In the procurement processes for continuous services, with a minimum interval of one (1) year, the adjustment criterion shall be by:

- I – strict adjustment, when there is no dedicated labor or predominance of labor, using specific or sector indexes;
- II – renegotiation, when there is dedicated labor or predominance of labor, upon an analytical demonstration of the variation in costs.

Paragraph 9. The tender documentation may, as provided for in the applicable regulations, require that a minimum percentage of the personnel responsible for the execution of the object of contracting is composed of:

- I – women victims of domestic violence;
- II – people from or discharged from prison.

Article 26. In the procurement process, a margin of preference may be set for:

I – nationally manufactured goods and services that meet Brazilian technical standards;

II – recycled, recyclable, or biodegradable goods, pursuant to the applicable regulations.

Paragraph 1. The margin of preference referred to in the chapeau of this article:

I – shall be defined in a well-grounded decision of the Federal Government, in case of item I of the chapeau of this article;

II – may be up to ten percent (10%) of the price of the goods and services that do not fall under items I or II of the chapeau of this article;

III – may be extended to manufactured goods and services originated from the Member States of the Southern Common Market (Mercosur), as long as there is reciprocity with the Country, which shall be provided for in an international agreement approved by the National Congress and ratified by the President of the Republic.

Paragraph 2. The margin of preference referred to in the chapeau of this article may be up to twenty percent (20%) for national manufactured goods and national services resulting from technological innovation and development in the Country, defined pursuant to the applicable Federal Government regulations.

Paragraph 3. (VETOED).

Paragraph 4. (VETOED).

Paragraph 5. The margin of preference does not apply to national manufactured goods or national services if the capacity to produce these goods or provide these services in the Country is lower than:

I – the amount to be acquired or contracted; or

II – the quantities established as a result of the subdivision of the object, when applicable.

Paragraph 6. Tender documentation for the contracting of goods, services, and works may, upon prior justification of the competent authority, require that the contracted party promotes, for the benefit of a Public body or entity or of those indicated thereby based on an isonomic process, commercial, industrial, technological compensation measures, or access to beneficial financing conditions, cumulatively or not, as established by the Federal Government.

Paragraph 7. For contracting intended for implementation, maintenance, and improvement of the information technology and communication systems deemed strategic for Federal Government actions, the procurement process may be restricted to goods and services with technology developed in the Country and manufactured and provided pursuant to the basic production process under Law No. 10,176 of January 11, 2001.

Article 27. A list of companies benefited as a result of the provisions in article 26 of this Law shall be disclosed, on an official website, at every financial year, also indicating the volume of funds directed to each one of them.

## **Section II**

### **Procurement Methods**

Article 28. The following are procurement methods:

- I – reverse auction;
- II – competitive procurement;
- III – contest;
- IV – auction;
- V – competitive dialogue.

Paragraph 1. In addition to the methods referred to in the chapeau of this article, the Administration may use the ancillary procedures provided for in article 78 of this Law.

Paragraph 2. The creation of other procurement methods or, yet, the combination of those referred to in the chapeau of this article is prohibited.

Article 29. The competitive procurement and the reverse auction follow the ordinary sequence of procedures referred to in article 17 of this Law, and the reverse auction is adopted whenever the object has performance and quality standards that can be objectively defined by the tender documentation, through typical market specifications.

Sole paragraph. The reverse auction does not apply in the case of contracting of specialized technical services of a predominantly intellectual nature and engineering works and services, except for the engineering services referred to in sub-item “a” of item XXI of the chapeau of article 6 of this Law.

Article 30. The contest shall conform to the rules and satisfy the conditions provided for in the tender documentation, indicating:

- I – the qualification required from the participants;
- II – the guidelines and methods of submission of the works;
- III – the conditions for holding and the award or compensation to the winner.

Sole paragraph. In contests intended for preparation of a design, the winner shall assign to the Public Administration, pursuant to article 93 of this Law, all property rights related to the design and authorize its execution as the competent authorities shall think fit and convenient.

Article 31. The auction may be held by an official auctioneer or a civil servant appointed by the competent authority of the Administration, and regulation shall provide for its operating procedures.

Paragraph 1. If the Administration chooses to hold the auction with an official auctioneer, it shall select him/her through registration or procurement process on a reverse auction basis and adopt the highest discount evaluation criterion for the commissions to be charged, with the percentage defined by the law regulating such profession used as a maximum parameter, and based on the prices of the goods to be auctioned.

Paragraph 2. The auction shall be preceded by the publication of the tender documentation on an official website, including:

I – the description of the good, with its characteristics, and, in the case of real property, its condition and boundaries, with reference to the abstract of title and registrations;

II – the amount at which the good has been valued, the minimum price for which it may be disposed of, the payment conditions, and, as the case may be, the appointed auctioneer's fees;

III – the indication of the location of the personal properties, the vehicles, and the livestock;

IV – the website and the period in which the auction shall take place, except if it will exceptionally be held in person due to an evidenced technical infeasibility or disadvantage for the Administration, in which case its location, date, and time shall be indicated;

V – the specification of any liens, encumbrances, or outstanding issues related to the goods to be auctioned.

Paragraph 3. In addition to the publication on the official website, the tender documentation of the auction shall be posted in a location with a good flow of people in the headquarters of the Administration and may also be published in other means necessary to increase the publicity and the competitiveness of the procurement process.

Paragraph 4. The auction shall not require prior registration, shall not include a qualification stage, and shall be homologated as soon as the bidding stage is completed, the appeal stage is surpassed, and the payment by the winning supplier is made, as defined in the tender documentation.

Article 32. The competitive dialogue method is restricted to contracting in which the Administration:

I – aims at contracting an object involving the following conditions:

- a) technical or technological innovation;
- b) impossibility for the body or entity to have its need met without adjustment of solutions available in the market; and
- c) impossibility for the technical specifications to be defined with sufficient accuracy by the Administration;

II – perceives the need to define and identify the means and alternatives that may meet its needs, with an emphasis on the following aspects:

- a) the most proper technical solution;
- b) the technical requirements capable of implementing the already defined solution;
- c) the legal or financial structure of the contract;

III – (VETOED).

Paragraph 1. In the competitive dialogue method, the following provisions shall be observed:

I – the Administration shall submit, upon publication of the tender documentation on an official website, its already defined needs and requirements, and shall establish a minimum term of twenty-five (25) business days for expression of interest in participating in the procurement process;

II – the criteria used for the pre-selection of the suppliers shall be provided for in the tender documentation, and all interested parties that meet the objective requirements established shall be accepted;

III – the discriminatory publication of information that may imply an advantage to a certain supplier shall be prohibited;

IV – the Administration may not disclose to other suppliers the proposed solutions or confidential information informed by a supplier without its consent;

V – the dialogue stage may be maintained until the Administration, in a well-grounded decision, identify the solution or the solutions that meet its needs;

VI – the meetings with the pre-selected suppliers shall be registered in minutes and recorded using audio and video technological resources;

VII – the tender documentation may provide for using consecutive stages, in which case each stage may restrict the solutions or the proposals to be discussed;

VIII – the Administration shall, upon declaring that the dialogue has been completed, attach to the records of the procurement process the registrations and recordings of the dialogue stage, start the competitive stage by publishing the tender documentation including the specification of the solution that meets its needs and the objective criteria to be used for the selection of the most advantageous proposal, and define a term of no less than sixty (60) business days for all suppliers pre-selected pursuant to item II of this paragraph to submit their proposals, which shall include the elements required for performing the design;

IX – the Administration may request clarification or adjustments to the proposals submitted, provided that they do not imply discrimination or influence the competition between the proposals;

X – the Administration shall define the winning proposal according to criteria published at the beginning of the competitive stage, ensuring the most advantageous contracting as the result;

XI – the competitive dialogue shall be held by a contracting commission composed of at least three (3) effective civil servants or public employees pertaining to the permanent staff of the Administration, and the contracting of professionals for technical assistance to the commission is allowed.

XII – (VETOED).

Paragraph 2. The professionals contracted for the purposes of item XI of paragraph 1 of this article shall sign a confidentiality agreement and shall refrain from developing activities that may characterize a conflict of interest.

### **Section III**

#### **Evaluation Criteria**

Article 33. The proposals shall be evaluated according to the following criteria:

I – the lowest price;

II – the highest discount;

III – the best technique or artistic content;

IV – technique and price;

V – the highest bid in case of auctions;

VI – the highest economic return.

Article 34. The evaluation by the lowest price or highest discount and, when applicable, by technique and price, shall consider the lowest expenditure for the Administration, having met the minimum quality parameters defined in the tender documentation.

Paragraph 1. The indirect costs related to maintenance, use, replacement, depreciation expenses, and expenses incurred due to the environmental impact of the object of the procurement, among other factors related to its life cycle, may be taken into account for the determination of the lowest expenditure, whenever they are objectively assessed, as provided for in the applicable regulations.

Paragraph 2. The evaluation by the highest discount shall have as a reference the global price established in the tender documentation, and the discount shall be extended to any addenda.

Article 35. The evaluation by best technique or artistic content shall consider exclusively the technical or artistic proposals submitted by the suppliers, and the tender documentation shall define the award or the compensation to be granted to the winners.

Sole paragraph. The evaluation criterion referred to in the chapeau of this article may be used for the contracting of technical, scientific, or artistic works and designs.

Article 36. The evaluation by technique and price shall consider the greatest score obtained by weighing, based on objective factors provided for in the tender documentation, the scores assigned to the aspects of technique and price of the proposal.

Paragraph 1. The evaluation criterion referred to in the chapeau of this article shall be chosen when a preliminary technical study shows that the assessment and weighing of the technical quality of the proposals that met the minimum requirements established in the tender documentation are relevant for the Administration's purposes in the procurement processes for the contracting of:

I – specialized technical services of a predominantly intellectual nature, in which case the evaluation criterion by technique and price shall be preferably used;

II – services mostly dependent on sophisticated technology and of a restricted domain, as attested by technical authorities of recognized qualification;

III – special goods and services of information and communication technology;

IV – special engineering works and services;

V – objects that are open to specific and alternative solutions and performance variations, with significant effects and concretely measurable on their quality, productivity, performance, and durability, when such solutions and variations can be adopted at the suppliers' free will, according to criteria objectively defined in the tender documentation.

Paragraph 2. In the evaluation by technique and price, the technical proposals shall be assessed and weighted and then the price proposals shall be submitted by the suppliers, in the maximum proportion of seventy percent (70%) of valuation for the technical proposal.

Paragraph 3. The past performance in the execution of contracts with the Public Administration shall be considered in the technical score, pursuant to the provisions in paragraphs 3 and 4 of article 88 of this Law and the applicable regulations.

Article 37. The evaluation by best technique or by technique and price shall be performed by:

I – verification of the capacity and experience of the supplier, evidenced through the submission of certificates of works, products, or services provided previously;

II – definition of scores for qualitative requirements by a board appointed therefor, according to guidelines and limitations defined in the tender documentation, considering the evidence of knowledge of the object, the method, and the work schedule, the qualification of the technical teams, and the list of the products to be delivered;

III – definition of scores for the performance of the supplier in previous contracting assessed in the supporting documents referred to in paragraph 3 of article 88 of this Law and in a unified information registration system available at the National Public Procurement Portal (PNCP).

Paragraph 1. The board referred to in item II of the chapeau of this article shall have at least three (3) members and may be composed of:

I – effective civil servants or public employees pertaining to the permanent Public staff;

II – professionals contracted for technical knowledge, experience, or renown in the assessment of the requirements specified in the tender documentation, provided that their works are supervised by professionals appointed as provided for in article 7 of this Law.

Paragraph 2. (VETOED).

Article 38. In the evaluation by best technique or by technique and price, obtaining a score for technical and professional capacity shall require the direct, personal participation of the corresponding professional in the execution of the respective contract.

Article 39. The evaluation by highest economic return, used exclusively for the execution of an efficiency contract, shall consider the highest savings for the Administration, and the compensation shall be fixed at a percentage that will apply proportionally to the savings effectively obtained in the execution of the contract.

Paragraph 1. In the procurement processes that adopt the evaluation criterion referred to in the chapeau of this article, the suppliers shall submit:

I – a work proposal, which shall include:

- a) the works, services, or goods, with the respective terms for carrying out or provision;
- b) the estimated generated savings, expressed in a measurement unit associated with the works, good, or service, and in currency;

II – a price proposal, which shall correspond to a percentage of the estimated generated savings during a certain period, expressed in currency.

Paragraph 2. The tender documentation shall provide for objective parameters of measurement of the savings generated with the execution of the contract, which will serve as a basis for the calculation of the compensation payable to the contracted party.

Paragraph 3. For purposes of evaluation of the proposal, the economic return shall be the result of the estimated generated savings with the execution of the work proposal, net of the price proposal.

Paragraph 4. In cases where the savings set forth in the efficiency contract are not generated:

I – the difference between the contracted savings and the effectively realized savings shall be deducted from the contracted party's compensation;

II – if the difference between the contracted savings and the effectively realized savings is higher than the maximum limit set forth in the contract, the contracted party shall also be subject to other applicable penalties.

## **Section IV**

### **Sector Provisions**

#### **Subsection I**

## **Purchases**

Article 40. The purchase planning shall take the expected annual consumption into account and observe the following:

I – acquisition and payment conditions similar to those of the private sector;

II – processing by means of a price registration system, when applicable;

II – definition of the units and quantities to be acquired based on the probable consumption and use, which estimate shall be obtained, whenever possible, through proper quantitative estimation techniques, and the continuous supply is admitted;

IV – keeping and storage conditions that protect the material from deterioration;

V – respect to the principles of:

a) standardization, considering the compatibility of aesthetic, technical, or performance specifications;

b) subdivision, when it is technically feasible and economically beneficial;

c) fiscal responsibility, upon comparison of the estimated to the budgeted expenses.

Paragraph 1. The terms of reference shall include the elements set forth in item XXIII of the chapeau of article 6 of this Law, in addition to the following information:

I – product specification, preferably according to the electronic standardization catalog, pursuant to the quality, performance, compatibility, durability, and safety requirements;

II – indication of the product delivery locations and the rules for temporary and final receipts, when applicable;

III – specification of the required warranty and the maintenance and technical support conditions, when applicable.

Paragraph 2. When applying the principle of subdivision to purchases, the following shall be considered:

I – the feasibility of dividing the object into lots;

II – take advantage of the specific characteristics of the local market aiming at economy, whenever possible, as long as the quality parameters are met; and

III – the duty of promoting increased competition and avoiding market concentration.

Paragraph 3. The subdivision shall not be adopted when:

I – economies of scale, cost reductions in the contract management, or the greatest benefit in the contracting recommend the purchase of the item from the same supplier;

II – the object to be contracted is a unified and integrated system, and there is a potential risk to the integrity of the intended object;

III – the process of standardization or choice of brand leads to a single supplier.

Paragraph 4. For the information provided for in item III of paragraph 1 of this article, as long as supported by a preliminary technical study, the Administration may require that the maintenance and technical support services are provided upon displacement of a technician, or in a service facility located at a distance compatible with its needs.

Article 41. In case of procurement processes involving the supply of goods, the Administration may, on an exceptional basis:

I – indicate one or more brands or models, as long as formally justified, upon the following events:

- a) as a result of the need for standardization of the object;
- b) as a result of the need to maintain the compatibility with platforms and standards already adopted by the Administration;
- c) when a given brand or model sold by more than one supplier is the only one capable of meeting the needs of the contracting party;
- d) when the description of the object to be procured may be better understood by identifying a certain brand or model that may be used as reference only;

II – require a sample or proof of concept of the good during the permanent pre-qualification procedure, at the proposal or bid evaluation stage, or during the effective period of the contract or of the tender proposal, as long as provided for in the tender documentation and the need for its submission is justified;

III – prohibit the contracting of a certain brand or product when it is evidenced, by means of an administrative proceeding, that the products previously purchased and used by the Administration do not meet essential conditions to the full performance of the contractual obligation;

IV – reasonably request a statement of joint liability by the manufacturer ensuring the performance of the contract in the case the supplier is a reseller or distributor.

Sole paragraph. The requirement provided for in item II of the chapeau of this article, when made in the proposal or bid evaluation stage, shall be restricted to the provisional winning supplier.

Article 42. The supplier may prove that the quality of the product is similar to that of the brands that may have been indicated in the tender documentation by any of the following documents:

I – proof that the product complies with the technical standards as determined by the competent official authorities, by the Brazilian Technical Standards Association – ABNT, or by any

other entity accredited with the National Institute of Metrology, Standardization and Industrial Quality – Inmetro;

II – a satisfactory compliance statement issued by another body or entity at an equivalent or higher governmental level that has acquired the product;

III – a certification, certificate, laboratory report, or similar document that enables the verification of the quality and compliance of the product or manufacturing process, including from the environmental point of view, issued by a competent official institution or by an accredited entity.

Paragraph 1. The tender documentation may require, as a condition for accepting the proposal, a product quality certificate issued by an institution accredited with the National Council of Metrology, Standardization and Industrial Quality – Conmetro.

Paragraph 2. The Administration may, pursuant to the tender documentation, offer a prototype of the intended object and require, at the proposal evaluation stage, samples from the provisional winning supplier, in order to answer an inquiry or, after the evaluation, as a condition to signing the contract.

Paragraph 3. In the interest of the Administration, the samples referred to in paragraph 2 of this article may be examined by an institution, as previously indicated in the tender documentation, with professional and ethical reputation in the field of specialization related to the object.

Article 43. The standardization process shall include:

I – an expert opinion on the product, taking into account the technical and aesthetic specifications, performance, analysis of previous contracting, costs, and maintenance and warranty conditions;

II – justified order of the higher authority for adoption of the standard;

III – summary of the justification and brief description of the defined standard, disclosed on an official website.

Paragraph 1. The standardization may be based on the process of another body or entity at the same or higher governmental level compared to the purchasing entity, and the rule deciding for the adherence to another standardization shall be duly justified, indicating the Administration's need and the risks resulting from this decision, and disclosed on an official website.

Paragraph 2. Contracting of widespread-software-based solutions shall be governed in a regulation providing for strategic management process for contracting involving this type of solution.

Article 44. In case there is a possibility to purchase or lease properties, the preliminary technical study shall consider the costs and benefits of each option, indicating the most beneficial one.

## **Subsection II**

### **Engineering Works and Services**

Article 45. Procurement processes for engineering works and services shall comply especially with the rules related to:

I – final, environmentally sound disposal of the solid waste generated by the contracted works;

II – mitigation through conditions and environmental compensation, which shall be determined during the environmental permitting process;

III – use of products, equipment, and services that provenly help to reduce the consumption of energy and natural resources;

IV – assessment of the impacts on the neighboring areas, pursuant to the urban laws and regulations;

V – protection of the historic, cultural, archeological, and immaterial heritage including by assessing the direct or indirect impacts caused by the contracted works;

VI – accessibility for people with disabilities or with reduced mobility.

Article 46. For the indirect execution of engineering works and services, the following arrangements are admitted:

I – unit price contract;

II – turnkey contract;

III – EPC contract;

IV – task contracting;

V – integrated contracting;

VI – semi-integrated contracting;

VII – supply and provision of related services.

Paragraph 1. Engineering works and services may not be executed without a detailed engineering design, except for the cases set forth in paragraph 3 of article 18 of this Law.

Paragraph 2. The Administration is not required to prepare a basic engineering design in the cases of integrated contracting, in which event a preliminary design shall be prepared according to a method defined in a rule of the competent entity, pursuant to the requirements provided for in item XXIV of article 6 of this Law.

Paragraph 3. In integrated contracting, after preparation of the basic engineering design by the contracted party, the set of drawings, descriptions, specifications, and construction and financial schedule shall be submitted for approval of the Administration, which shall evaluate its adequacy to the parameters defined in the tender documentation and compliance with the technical standards; amendments that reduce the quality or useful life of the development are prohibited, and the full

responsibility of the contracted party for the risks associated with the basic engineering design is maintained.

Paragraph 4. For integrated and semi-integrated contracting arrangements, the tender documentation and the contract, when applicable, shall set forth the necessary measures for effecting an expropriation authorized by the Government, as well as:

I – the person responsible for each stage of the expropriation procedure;

II – the responsibility for paying fair compensation;

III – the estimated amount to be paid as compensation for the expropriated properties, including any correlated costs;

IV – the objective distribution of risks between the parties, including the risk posed by the difference between the expropriation cost and the estimated amount, and by any damage and losses caused by a delay in the availability of the expropriated properties;

V – on behalf of whom the temporary vesting in possession and the ownership of the properties to be expropriated shall be registered.

Paragraph 5. In semi-integrated contracting, upon prior authorization of the Administration, the basic engineering design may be changed, provided that the superiority of the innovations proposed by the contracted party regarding cost reduction, increase in quality, reduction in the execution time, or ease of maintenance or operation, and the contracted party assumes full responsibility for the risks associated with the change in the basic engineering design.

Paragraph 6. Each stage shall mandatorily be preceded by the completion and approval of the works of the previous stages by the competent authority.

Paragraph 7. (VETOED).

Paragraph 8. (VETOED).

Paragraph 9. The execution arrangements referred to in items II, III, IV, V, and VI of the chapeau of this article shall be procured for a fixed price and shall adopt a measurement and payment method associated with the execution of stages of the construction and financial schedule related to the achievement of result goals, and the adoption of a compensation method based on unit prices or with reference to the execution of amounts of unit items is prohibited.

### **Subsection III**

#### **Miscellaneous Services**

Article 47. The procurement for services shall respect the principles of:

I – standardization, considering the compatibility of aesthetic, technical, or performance specifications;

II – subdivision, when it is technically feasible and economically beneficial.

Paragraph 1. When applying the principle of subdivision, the following shall be considered:

I – technical responsibility;

II – the cost for the Administration of several contracts when compared to the cost reduction benefits, with the division of the object into items;

III – the duty of promoting increased competition and avoiding market concentration.

Paragraph 2. In the procurement process for maintenance and technical support services, the tender documentation shall define the location where the services are to be provided, and a technician may be required to commute to the location of the service or the contracted party may be required to have a facility for the provision of services at a distance compatible with the needs of the Administration.

Article 48. Material activities that are ancillary, intermediary, or complementary to the matters that constitute the area of the legal jurisdiction of the body or entity may be subject to execution by third parties, and the following is prohibited for the Administration or its agents in the contracting of the outsourced service:

I – to indicate expressly specific persons to execute the contracted object directly or indirectly;

II – to determine a salary lower than the one defined by law or regulation and that shall be paid by the contracted party;

III – to establish a subordination relationship with an employee of a company that provides an outsourced service;

IV – to define a payment method exclusively based on reimbursement of salaries paid;

V – to demand that an employee of a company providing an outsourced service carries out tasks not included in the scope of the object of the contracting;

VI – to include in the tender documentation requirements that characterize undue intervention of the Administration in the contracted party's internal management.

Sole paragraph. During the effectiveness of the contract, the contracted party may not contract a spouse, partner, or relative, whether it is lineal, collateral, or by affinity, up to the third degree, of a manager of the contracting body or entity or of a public official with a duty in the procurement process or acting in the inspection or management of the contract, and such prohibition shall be expressly included in the tender documentation.

Article 49. The Administration may, upon express justification, contract more than one company or institution to execute the same service, provided that the contracting does not imply a loss of economies of scale, when:

I – the object of the contracting can be executed concurrently and simultaneously by more than one contracted party; or

II – the multiple executions are convenient to satisfy the Administration.

Sole paragraph. In the cases provided for in the chapeau of this article, the Administration shall maintain individualized control over the execution of the object of the contract by each one of the contracted parties.

Article 50. In the contracting of services with dedicated labor, the contracted party shall provide, upon request of the Administration, under penalty of fine, evidence of performance of labor obligations and payment of the contribution to the Government Severance Indemnity Fund for Employees (FGTS) for the employees directly involved in the execution of the contract, especially regarding:

I – registration of the working hours;

II – proof of payment of salaries, allowances, overtime hours, remunerated weekly day-off, and thirteenth salary;

III – proof of deposit of the FGTS contribution;

IV – receipt of granting and payment of vacation and of the respective allowance;

V – receipt of discharge of labor and social-security obligations of the employees dismissed until the date of termination of the contract;

VI – proof of payment of public transportation and food vouchers, as provided for in the collective bargaining agreement.

#### **Subsection IV**

##### **Lease of Properties**

Article 51. Except as provided for in item V of the chapeau of article 74 of this Law, the lease of properties shall be preceded by a procurement process and prior assessment of the good, of its state of preservation, of the costs of adjustments, and of the term for amortization of the necessary investments.

#### **Subsection V**

##### **International Procurement Processes**

Article 52. In international procurement processes, the tender documentation shall be adjusted to monetary policy and international trade guidelines and meet the requirements of the competent authorities.

Paragraph 1. When a foreign supplier is allowed to quote prices in foreign currency, Brazilian suppliers may also do so.

Paragraph 2. The payment to the Brazilian supplier that may be contracted as a result of the procurement process under the conditions referred to in paragraph 1 of this article shall be made in national currency.

Paragraph 3. Payment guarantees provided to Brazilian suppliers shall be equivalent to those offered to foreign suppliers.

Paragraph 4. The encumbrances levied on the prices shall be included in the tender documentation and shall be defined based on estimates or averages of the taxes.

Paragraph 5. The proposals of all suppliers shall be subject to the same rules and conditions, as established in the tender documentation.

Paragraph 6. Pursuant to the terms of this Law, the tender documentation may not provide for qualification, classification, and evaluation conditions that constitute access barriers to the foreign supplier, and a margin of preference may be established for goods produced in the Country and national services compliant with the Brazilian technical standards, as defined in article 26 of this Law.

### **CHAPTER III**

#### **PUBLICATION OF THE TENDER DOCUMENTATION**

Article 53. At the end of the preparatory stage, the procurement process shall be forwarded to the Administration's legal assistance entity, which shall provide the prior legality control by performing a legal analysis of the contracting.

Paragraph 1. During the preparation of the legal opinion, the Administration's legal assistance entity shall:

I – evaluate the procurement process according to prior objective criteria of definition of priority;

II – express its opinion in a simple and comprehensible language clearly and objectively, evaluating all elements essential to the contracting and disclosing the factual and lawful assumptions taken into account in the legal analysis;

III – (VETOED).

Paragraph 2. (VETOED).

Paragraph 3. Once the discovery phase of the process from the technical and legal aspects is finished, the authority shall determine the publication of the tender documentation as provided for in article 54.

Paragraph 4. Pursuant to this article, the Administration's legal assistance entity shall also provide the prior legality control of direct contracting, agreements, cooperation agreements, partnerships, adjustments, adhesion contracts to minutes of tender proposals, other similar instruments, and addenda thereto.

Paragraph 5. The legal analysis is not necessary in the cases previously defined in an act of the maximum competent legal authority, which shall consider the low price, the low complexity of the contracting, the immediate delivery of the good, or the use of draft tender documentation and

contract instruments, partnerships, or other adjustments previously standardized by the legal assistance entity.

Paragraph 6. (VETOED).

Article 54. The tender documentation shall become public upon publication and maintenance of the full content of the call notice and its attachments on the National Public Procurement Portal (PNCP).

Paragraph 1. (VETOED).

Paragraph 2. It is possible to provide additional publication and maintenance of the full content of the tender documentation and the attachments thereto on an official website of the federated state, body or entity responsible for the procurement process, or, in the case of a public consortium, of the entity with the highest level among them, and publication directed to interested parties duly registered for this purpose is also allowed.

Paragraph 3. After the homologation of the procurement process, the documents prepared during the preparatory stage that may not have been included in the tender documentation and in the attachments thereto shall be made available in the National Public Procurement Portal (PNCP) and, if the body or entity responsible for the procurement process deems applicable, also on the website referred to in paragraph 2 of this article.

## **CHAPTER IV**

### **SUBMISSION OF PROPOSALS AND BIDS**

Article 55. The minimum periods for submission of proposals and bids, as of the date of publication of the tender documentation, are:

I – for the acquisition of goods:

- a) eight (8) business days, when the evaluation criteria adopted are the lowest price or the highest discount;
- b) fifteen (15) business days, in the cases not covered by sub-item “a” of this item;

II – for works and services:

- a) ten (10) business days, when the evaluation criteria adopted are the lowest price or the highest discount, in case of ordinary services and ordinary engineering works and services;
- b) twenty-five (25) business days, when the evaluation criteria adopted are the lowest price or the highest discount, in case of special services and special engineering works and services;
- c) sixty (60) business days, in case of an integrated contracting;
- d) thirty-five (35) business days, in case of a semi-integrated contracting or in cases not covered by sub-items “a”, “b”, and “c” of this item;

III – for procurement processes in which the evaluation criterion is the highest bid, fifteen (15) business days;

IV – for procurement processes in which the evaluation criterion is technique and price or the best technique or artistic content, thirty-five (35) business days.

Paragraph 1. Any amendments to the tender documentation shall entail a new publication in the same form of its initial publication, and pursuant to the same terms of the original acts and procedures, except when the amendment does not compromise the preparation of the proposals.

Paragraph 2. The terms provided for in this article may, in a well-grounded decision, be reduced by up to half in the procurement processes carried out by the Ministry of Health, within the scope of the Unified Health System (SUS).

Article 56. The competitive mode may be, individually or in the aggregate:

I – open, in which event the suppliers shall submit their proposals through public and consecutive bids, increasing or decreasing;

II – closed, in which event the proposals shall remain in secrecy until the date and time scheduled for disclosure.

Paragraph 1. The isolated use of the closed competitive mode shall be prohibited when the evaluation criteria by lowest price or highest discount are adopted.

Paragraph 2. The use of the open competitive mode shall be prohibited when the evaluation criterion by technique and price is adopted.

Paragraph 3. The following bids shall be deemed to be average:

I – bids equal to or lower than the highest bid made, when the evaluation criterion adopted is the highest bid;

II – bids equal to or higher than the lowest bid made, when other evaluation criteria are adopted.

Paragraph 4. After the definition of the best proposal, if the difference with respect to the proposal ranked in the second position is of at least five percent (5%), the Administration may accept the resumption of the open competition, as established in the public notice, for the definition of the other positions.

Paragraph 5. In procurement processes for engineering works or services, after evaluation, the winning supplier shall once again prepare and submit electronically to the Administration the spreadsheets indicating the quantitative information and the unit costs and detailing the Bonuses and Indirect Expenses (BDI) and the Social Charges (ES), with the respective amounts adjusted to the final amount of the winning proposal, and unit prices may be used, in case of a turnkey contract, EPC contract, semi-integrated contracting, and integrated contracting, exclusively for any essential adjustments to the construction and financial schedule and to guide an exceptional future amendment to the contract.

Article 57. The tender documentation may establish a minimum interval of difference in amounts between the bids, which shall apply both with respect to intermediate bids and to the proposal that underbids the best offer.

Article 58. At the moment of submission of the proposal, the proof of payment of an amount for the bid bond may be required for pre-qualification.

Paragraph 1. The bid bond may not exceed one percent (1%) of the estimated amount for the contracting.

Paragraph 2. The bid bond shall be returned to the suppliers within ten (10) business days of execution of the contract or of the date on which the procurement process is declared to have failed.

Paragraph 3. The refusal to sign the contract or failure to submit the documents for the contracting shall entail the execution of the full amount of the bid bond.

Paragraph 4. The bid bond may be provided in the types referred to in paragraph 1 of article 96 of this Law.

## **CHAPTER V**

### **EVALUATION**

Article 59. The following proposals shall be disqualified:

I – proposals with irremediable defects;

II – proposals that do not meet the technical specifications detailed in the tender documentation;

III – proposals with unfeasible prices or that are higher than the estimated contracting budget;

IV – proposals that have not demonstrated their feasibility, whenever required by the Administration;

V – proposals that do not meet any other requirements of the tender documentation, as long as irremediably.

Paragraph 1. Conformity of the proposals may be verified exclusively in relation to the first-ranked proposal.

Paragraph 2. The Administration may hold inquiries to assess the feasibility of the proposals or require the suppliers to demonstrate it, as provided for in item IV of the chapeau of this article.

Paragraph 3. For engineering and architecture works and services, for purposes of assessment of the feasibility and overpricing, the fixed price, the quantitative information, and the unit prices deemed relevant shall be taken into account, pursuant to the unit and global criterion of acceptability of process to be established in the tender documentation, according to the specificities of the corresponding market.

Paragraph 4. For engineering works and services, proposals whose amounts are smaller than seventy-five percent (75%) of the amount budgeted by the Administration shall be deemed unfeasible.

Paragraph 5. In the contracting of engineering works and services, an additional guarantee shall be required of the winning supplier whose proposal is smaller than eighty-five percent (85%) of the amount budgeted by the Administration, equivalent to the difference between the latter and the amount of the proposal, without prejudice to other guarantees that may be required according to this Law.

Article 60. In case of a tie between two or more proposals, the following criteria will be used to break the tie, in this order:

I – final competition, in which event the tied suppliers may submit a new proposal immediately after the ranking;

II – assessment of previous contract performance by the suppliers, for which record information shall be preferably used for purposes of attesting performance of obligations as set forth in this Law;

III – development by the supplier of actions for the equity between men and women in the work environment, pursuant to the applicable regulations;

IV – development by the supplier of an integrity program, as instructed by the regulatory entities.

Paragraph 1. On an arms-length basis, if the tie is not broken, the preference shall be ensured successively to the goods and services produced or provided by:

I – companies established in the territory of the State or of the Federal District of the Public state or district supplying body or entity or, in the case of a procurement process carried out by a Municipal body or entity, in the territory of the State where it is located;

II – Brazilian companies;

III – companies that invest in research and in the development of technology in the Country;

IV – companies that evidence the practice of mitigation, as provided by Law No. 12,187 of December 29, 2009.

Paragraph 2. The rules provided for in the chapeau of this article shall not impair the application of the provisions in article 44 of Complementary Law No. 123 of December 14, 2006.

Article 61. Once the result of the evaluation has been defined, the Administration may negotiate more beneficial conditions with the first-ranked supplier.

Paragraph 1. The negotiation may be made with the other suppliers, according to the initial ranking, when the proposal by the first-ranked supplier, even after the negotiation, is disqualified because it remains higher than the maximum price, as defined by the Administration.

Paragraph 2. The negotiation shall be conducted by a contracting agent or contracting commission, pursuant to the applicable regulations, and after completion, its result shall be disclosed to all suppliers and attached to the records of the procurement process.

## **CHAPTER VI**

### **QUALIFICATION**

Article 62. Qualification is the stage of the procurement process in which the set of information and documents necessary and sufficient to demonstrate the supplier's ability to execute the object of the procurement process is verified, and it is classified as:

I – legal qualification;

II – technical qualification;

III – qualification pursuant to tax, social-security, and labor laws and regulations;

IV – economic and financial qualification.

Article 63. In the qualification stage of the procurement processes, the following provisions shall be observed:

I – a declaration may be required from the suppliers stating that they meet the qualification requirements, and the declarant shall be liable for the veracity of the information provided, as provided by law;

II – the submission of the qualification documents shall be required from the winning supplier only, except when the qualification stage precedes the evaluation stage;

III – the documents related to tax compliance shall only be required, in any case, after the evaluation of the proposals, and only from the first-ranked supplier;

IV – a declaration shall be required from the supplier stating that it meets the requirements related to quotas for persons with disabilities and for persons rehabilitated under Social Security, as provided by law and other specific regulations.

Paragraph 1. The tender documentation shall include a clause requiring under penalty of disqualification that the suppliers declare that their economic proposals comprise all costs of compliance with labor rights ensured by the Brazilian Federal Constitution, employment laws, non-statutory laws, collective bargaining agreements, and conduct adjustment agreements prevailing on the date of submission of the proposals.

Paragraph 2. When the prior assessment of the place of execution is essential for the full knowledge of the conditions and singularities of the object to be contracted, the tender documentation may establish, under penalty of disqualification, the need for the supplier to attest that it knows the place and the conditions for the execution of the works or service, and it is ensured the right to carry out a prior inspection.

Paragraph 3. For the purposes provided for in paragraph 2 of this article, the tender documentation shall always set forth the possibility to replace the inspection with a formal declaration signed by the supplier's technician in charge about the full knowledge of the conditions and singularities of the contracting.

Paragraph 4. For the purposes provided for in paragraph 2 of this article, if the suppliers choose to carry out the prior inspection, the Administration shall make a different date and time available for any interested parties.

Article 64. After delivery of the qualification documents, it shall not be allowed to replace or submit new documents, except in an inquiry, to:

I – obtain more information about the documents already submitted by the suppliers, and provided that this is necessary to assess facts existing at the time of the beginning of the procurement process;

II – update documents that have expired after the date of receipt of the proposals.

Paragraph 1. In the analysis of the qualification documents, the procurement commission may remedy errors or faults that do not change the content of the documents and their legal validity, upon justified order, registered and accessible to all, attributing efficacy thereto for purposes of qualification and ranking.

Paragraph 2. When the qualification stage precedes the evaluation stage and has already been completed, the suppliers may not be excluded for reasons related to qualification, except due to supervening facts or those only known after the evaluation.

Article 65. The qualification conditions shall be defined in the tender documentation.

Paragraph 1. The companies created in the financial year of the procurement process shall meet all qualification requirements and shall be authorized to replace the accounting statements with the opening balance sheet.

Paragraph 2. The qualification may occur remotely through an electronic communication process, as provided for in the applicable regulations.

Article 66. The legal qualification aims at evidencing the supplier's ability to exercise rights and assume obligations, and the documents it shall submit are limited to the proof of legal existence of the entity and, when applicable, of authorization for the exercise of the activity to be contracted.

Article 67. The documents related to the technical and professional qualification and to the technical and operational qualification shall be restricted to:

I – the presentation of a professional duly registered with the relevant professional board, when applicable, holder of a technical under the responsibility certificate for the execution of works or services with similar characteristics, for purposes of contracting;

II – certificates or certifications duly issued by the relevant professional board, when applicable, evidencing the operational ability to execute similar services of equivalent or greater

technological and operational complexity, as well as supporting documents issued pursuant to paragraph 3 of article 88 of this Law;

III – indication of the proper technical staff, facilities, and equipment available for the execution of the object of the procurement process, as well as qualification of each member of the technical team that shall be responsible for the works;

IV – evidence of the meeting of the requirements provided by special law, when applicable;

V – registration or application with the relevant professional board when applicable;

VI – declaration that the supplier learned of all information and local conditions to perform the obligations object of the procurement process;

Paragraph 1. The requirement of certificates shall be restricted to the parts of most relevance or of a significant amount of the object of the procurement process, which are those with an individual amount equal to or larger than four percent (4%) of the estimated total amount of the contracting.

Paragraph 2. Pursuant to the provisions in the chapeau and in paragraph 1 of this article, certificates with minimum amounts of up to fifty percent (50%) of the parts referred to in such paragraph may be required, and specific location and time limitations regarding the certificates are prohibited.

Paragraph 3. Except in the contracting for engineering works and services, the requirements referred to in items I and II of the chapeau of this article, at the Administration's discretion, may be replaced by other evidence that the professional or the company has the technical knowledge and practical experience in the execution of service with similar characteristics, in which event the acceptable alternative evidence shall be provided for in the applicable regulations.

Paragraph 4. Other proper documents or certificates issued by foreign entities shall be accepted when accompanied by a translation into Portuguese, unless the disreputability of the issuing entity is evidenced.

Paragraph 5. For continuous services, the tender documentation may require a certificate or certification evidencing that the supplier has provided services similar to the object of the procurement process, in consecutive periods or otherwise, for a minimum term, which may not be more than three (3) years.

Paragraph 6. The professionals appointed by the supplier pursuant to items I and III of the chapeau of this article shall participate in the works or service object of the procurement process, and they may be replaced with professionals of equivalent or higher expertise, provided that the replacement is approved by the Administration.

Paragraph 7. Foreign limited liability companies shall meet the requirement provided for in item V of the chapeau of this article by submitting, at the moment of execution of the contract, the application for registration with the relevant professional board in Brazil.

Paragraph 8. The list of commitments made by the supplier that entail a decrease in the availability of the technical staff referred to in items I and III of the chapeau of this article may be required.

Paragraph 9. The tender documentation may establish, for specific technical aspects, that the technical qualification is evidenced by certificates related to a potential subcontractor, limited to twenty-five percent (25%) of the object to be procured, in which event more than one supplier may submit a certificate related to the same potential subcontractor.

Paragraph 10. In case a supplier submits a certificate of previous performance issued in favor of a consortium of which it has been a member, if the certificate or the acts of incorporation of the consortium do not identify the activity developed by each consortium member, the following criteria shall be adopted in the assessment of its technical qualification:

I – if the certificate has been issued in favor of a homogeneous consortium, the experiences certified shall be recognized for each company member of the consortium at the quantitative proportion of its share in the consortium, except in procurement processes for the contracting of specialized technical services of a predominantly intellectual nature, in which all experiences certified shall be recognized for each company member of the consortium;

II – if the certificate has been issued in favor of a heterogeneous consortium, the experiences certified shall be recognized for each consortium member according to the respective fields of action, including in procurement processes for the contracting of specialized technical services of a predominantly intellectual nature.

Paragraph 11. In the event of paragraph 10 of this article, for purposes of evidence of the interest percentage of the consortium member, if it is not expressly included in the certificate or certification, a copy of the acts of incorporation of the consortium shall be attached to the certificate or certification.

Paragraph 12. For the documents referred to in item I of the chapeau of this article, certificates of technical responsibility of professionals who, pursuant to the applicable regulations, have caused the imposition of the sanctions provided for in items III and IV of the chapeau of article 156 of this Law, as a result of proposed instructions, technical prescription, or any professional act under their responsibility, shall not be accepted.

Article 68. Qualification pursuant to tax, social-security, and labor laws and regulations shall be assessed through the following requirements:

I – enrollment in the Individual Taxpayer's Register (CPF) or the National Register of Legal Entities (CNPJ);

II – enrollment in the state or municipal taxpayer's register, if any, related to the supplier's domicile or principal place of business, related to their field of activity and consistent with the object of the contract;

III – regular standing before the national, state, and/or municipal Treasury of the domicile or principal place of business of the supplier, or another equivalent document, as provided by law;

IV – regular standing with respect to social-security contributions and the contributions to the Government Severance Indemnity Fund for Employees (FGTS), which demonstrates regular payment of the social charges established by law;

V – regular standing before the Labor Courts;

VI – compliance with the provisions in item XXXIII of article 7 of the Brazilian Federal Constitution.

Paragraph 1. The documents referred to in the items of the chapeau of this article may be replaced or provided, in whole or in part, by other means capable of proving the supplier's regular standing, including by electronic means.

Paragraph 2. The proof of compliance with the provisions in items III, IV, and V of the chapeau of this article shall be provided as specified by law.

Article 69. The economic and financial qualification aims at evidencing the supplier's economic capacity to perform the obligations arising from the future contract, should be objectively evidenced by the economic coefficients and indexes set forth in the tender documentation, duly justified in the procurement process, and shall be restricted to the submission of the following documents:

I – balance sheet, income statement, and other accounting statements for the last two (2) fiscal years;

II – clearance certificate for bankruptcy issued by the case management office of the supplier's principal place of business.

Paragraph 1. At the Administration's discretion, a declaration certifying the compliance by the supplier with the economic indexes set forth in the tender documentation may be required and shall be signed by a qualified accounting professional.

Paragraph 2. To meet the provisions in the chapeau of this article, no minimum revenue amounts and minimum profitability ratios may be required.

Paragraph 3. A list of the commitments made by the supplier that entail a decrease in their economic and financial capacity may be required, except for parts of contracts that were already executed.

Paragraph 4. The Administration, in purchases for future delivery and in the execution of works and services, may establish in the tender documentation the requirement of minimum capital or minimum net equity equal to up to ten percent (10%) of the estimated contracting amount.

Paragraph 5. Ratios and amounts not usually adopted may not be required to assess the economic and financial condition sufficient to perform the obligations resulting from the procurement process.

Paragraph 6. The documents referred to in item I of the chapeau of this article shall be limited to the latest year in case the legal entity has been organized in less than two (2) years.

Article 70. The documents referred to in this Chapter may be:

I – submitted in its original form, as copies, or in any other mean expressly accepted by the Administration;

II – replaced by record information provided by a Public body or entity, as long as provided for in the tender documentation and provided that the record has been made in compliance with the provisions in this Law;

III – not required, in whole or in part, in contracting for immediate delivery, in contracting involving total amounts lower than one-fourth (1/4) of the limit for non-requirement of a procurement process for purchases in general, and in contracting for research and development products up to the amount of three hundred thousand Reais (BRL300,000.00).

Sole paragraph. Foreign companies that do not operate in the Country shall submit equivalent documents, pursuant to the applicable regulations issued by the Federal Government.

## **CHAPTER VII**

### **COMPLETION OF THE PROCUREMENT PROCESS**

Article 71. Once the evaluation and eligibility stages end, and there are no more administrative appeals, the procurement process shall be forwarded to the higher authority, who may:

I – determine that the records shall be sent back for remediation of nonconformities;

II – revoke the procurement process for convenience and opportunity reasons;

III – proceed to the annulment of the procurement process, *ex-officio* or upon request of a third party, whenever there is irremediable illegality;

IV – award the object and ratify the procurement process.

Paragraph 1. When declaring the invalidity, the authority shall expressly indicate the acts with irremediable defects, rendering all subsequent acts depending on them void and giving rise to the assessment of the responsibility of those who have caused these defects.

Paragraph 2. The final reason for revocation of the procurement process shall result from a subsequent fact which shall be duly evidenced.

Paragraph 3. In cases of annulment and revocation, the interested parties shall be ensured the right to prior reply.

Paragraph 4. The provisions in this article shall apply, as appropriate, to direct award contracting and ancillary procedures of the procurement process.

## **CHAPTER VIII**

### **DIRECT AWARD CONTRACTING**

#### **Section I**

#### **Direct Award Contracting Process**

Article 72. The direct award contracting process, which comprises cases of non-applicability and non-requirement of a procurement process, shall be accompanied by the following documents:

I – documents for formalizing the demand and, as the case may be, a preliminary technical study, risk analysis, terms of reference, basic engineering design or detailed engineering design;

II – estimated expenses, to be calculated as established in article 23 of this Law;

III – legal opinion and expert opinions, as the case may be, evidencing the meeting of the requirements;

IV – evidence of the compatibility between the expected budget resources and the commitment to be assumed;

V – evidence that the contracted party meets the minimum qualification and eligibility requirements;

VI – reason for the choice of the contracted party;

VII – justification for the price;

VIII – authorization of the competent authority.

Sole paragraph. The act authorizing the direct award contracting or the statement arising from the contract shall be published and made available to the public on an official website.

Article 73. In the case of an improper direct award contracting with willful misconduct, fraud, or gross error, the contracted party and the responsible public official shall be jointly liable for the damage caused to the public treasury, without prejudice to other applicable legal sanctions.

## **Section II**

### **Non-Applicability of a Procurement Process**

Article 74. The procurement process is not applicable in case the competition is not feasible, especially in the cases of:

I – acquisition of materials, equipment, products, or contracting of services that can only be provided by an exclusive manufacturer, company, or sales representative;

III – contracting of a professional artist, directly or through an exclusive businessman, provided that he/she is recognized by specialized critics or by public opinion;

III – contracting of the following specialized technical services of a predominantly intellectual nature with professionals or companies of well-known specialization. Non-requirement does not apply to marketing and advertising services:

- a) technical studies, plans, basic engineering designs, or detailed engineering designs;
- b) opinions, expert examinations, and general assessments;

- c) technical advice or consulting services and financial or tax audits;
- d) inspection, supervision, or management of works or services;
- e) sponsorship or defense of lawsuits or administrative actions;
- f) training and development of personnel;
- g) restoration of works of art and properties of historical value;
- h) quality and technological controls, analyses, field and laboratory tests and trials, instrumentation and monitoring of specific work and environmental parameters, and other engineering services that fall under the provisions in this item;

IV – objects that may be or are required to be contracted through registration;

V – acquisition or lease of properties which facilities and location make their choice necessary.

Paragraph 1. For purposes of the provisions in item I of the chapeau of this article, the Administration shall demonstrate the infeasibility of the competition through an exclusivity agreement, a manufacturer's declaration, or another reputable document able to evidence that the object is supplied or provided by an exclusive manufacturer, company, or sales representative, and the preference for a specific brand is prohibited.

Paragraph 2. For purposes of the provisions in item II of the chapeau of this article, the individual or legal entity that bears a contract, declaration, letter or any other document certifying the permanent and continuous exclusive representation, in the Country or a specific State, of a professional from the artistic industry is deemed to be an exclusive agent, and there is no possibility of direct award contracting due to non-applicability through an agent with representation restricted to a specific event or location.

Paragraph 3. For purposes of the provisions in item III of the chapeau of this article, a professional or company is deemed to have well-known expertise when it is possible to infer, based on previous performance, studies, experiences, publications, organization, equipment, technical team, or other requirements related to their activities in their field of expertise, that their work is essential and indisputably the most suitable for full performance of the object of the contract.

Paragraph 4. In contracting based on item III of the chapeau of this article, no companies may be subcontracted and no professionals other than those who have justified the non-applicability may work in the object.

Paragraph 5. In contracting based on item V of the chapeau of this article, the following requirements shall be met:

I – previous assessment of the property, of its state of preservation, of costs of adaptation, when essential to the use of the property, and of the investment amortization period;

II – ensuring that there are no vacant and available public properties that meet the needs of the object;

III – justifications that evidence the uniqueness of the property to be purchased or leased by the Administration and the benefits arising therefrom.

### **Section III**

#### **Non-Requirement of a Procurement Process**

Article 75. A procurement process is not required:

I – for contracting involving amounts lower than one hundred thousand Reais (BRL100,000.00), for engineering works and services or maintenance of motor vehicles;

II – for contracting involving amounts lower than fifty thousand Reais (BRL50,000.00), for other services and purchases;

III – for contracting maintaining all conditions defined in the tender documentation for a procurement process held less than one (1) year ago, in case, in that procurement process:

a) there were no interested suppliers or valid proposals submitted;

b) the proposals submitted have prices clearly higher than market prices or incompatible with those fixed by the competent official authorities;

IV – for contracting related to:

a) domestic or foreign goods, components, or parts required for the maintenance of equipment, to be acquired from the original supplier of this equipment during the technical warranty period, when such condition of exclusivity is essential for the effectiveness of the warranty;

b) goods, services, disposals, or works under a specific international agreement approved by the National Congress, when the conditions offered are clearly beneficial to the Administration;

c) research and development products, and the contracting shall be limited, for engineering works and services, to the amount of three hundred thousand Reais (BRL300,000.00);

d) technology transfer or licensing of a right to use or exploit a protected invention, in contracting conducted by a public scientific, technological, and innovation institution (ICT) or with a funding agency, provided that the benefit for the Administration is demonstrated;

e) agricultural and farm produce, bread, and other perishable food products, during the period necessary for execution of the corresponding procurement processes, in which event the contracting shall be based directly on the price for the day;

f) goods or services produced or provided in the Country involving, cumulatively, high technological complexity and national defense;

g) materials used by the Armed Forces, except for materials used for personal and administrative purposes, in case there is a need to keep the standardization required by the logistic

support structure of the means of transportation by sea, air, and land, upon authorization of the commander of the military force;

h) goods and services to meet the needs of the contingents of Brazilian military forces deployed in peace operations abroad, in which event the contracting shall be justified as to the price and choice of the supplier or performer and ratified by the commander of the military force;

i) the supply of military manpower in an occasional short-term stay at ports, airports, or locations other than their headquarters, due to operational activity or training;

j) the collection, processing, and sale of recyclable or reusable urban solid waste, in areas with a selective waste collection system, carried out by associations or cooperatives composed exclusively of low-income individuals recognized by the government as recyclable material collectors, with the use of equipment in compliance with technical, environmental and public health standards;

k) the acquisition or restoration of works of art and historical objects, of certified authenticity, provided that they are compatible or inherent to the purposes of the body;

l) specialized services or acquisition or rental of equipment intended for tracking and obtaining of evidence set forth in items II and V of the chapeau of article 3 of Law No. 12,850 of August 2, 2013, in case of reasonable need for maintaining the secrecy of the investigation;

m) the acquisition of medicine exclusively intended for treating rare diseases as defined by the Ministry of Health;

V – for contracting aiming at the compliance with the provisions in articles 3, 3-A, 4, 5, and 20 of Law No. 10,973 of December 2, 2004, pursuant to the general contracting principles included therein.

VI – for contracting that may entail impairment of national security, in the cases established by the Minister of Defense, upon demand from the commands of the armed forces or other ministries;

VII – in cases of war, state of defense, state of siege, federal intervention, or serious disorder;

VIII – in emergency or public calamity events, when there is an urgent need to respond to a situation that may cause losses or compromise the continuity of public services or the security of people, works, services, equipment, and other properties, whether public or private, and only for acquisition of goods necessary to respond to the emergency or calamity situation and for parts of works and services that may be completed within no more than one (1) year of the date in the emergency or calamity occurred, provided that the respective contracts may not be renewed and that no company may be contracted twice as a result of the provisions in this item;

IX – for the acquisition by a legal entity of domestic public law of goods manufactured or services provided by an body or entity forming part of the Public Administration and that have been created for this specific purpose, as long as the contracted price is consistent with market prices;

X – when the Federal Government has to intervene with the economy to regulate prices or normalize the supply;

XI – in the execution of a program contract with a federated state or one of its indirect Public entities for provision of public services as an association pursuant to the terms authorized in a public consortium agreement or in a cooperation partnership;

XII – for contracting in which there is technology transfer related to strategic products for the Unified Health System (SUS), as listed in a rule issued by the national management of SUS, including upon acquisition of these products during the stages of technology absorption, and in amounts consistent with those defined in the instrument signed for the technology transfer;

XIII – for contracting professionals to compose the technical criteria evaluation committee, when related to a technical professional of well-known expertise;

XIV – for the contracting of a nonprofit association of people with disabilities of proven reputability by a public body or entity, for the provision of services, as long as the contracted price is consistent with market prices and the contracted services are provided exclusively by people with disabilities;

XV – for contracting of Brazilian institutions whose purpose, as provided for in the bylaws, is to support, prospect, and develop activities related to education, research, continuing education, institutional, scientific, and technological development, and encouragement to innovation, including the administrative and financial management of these activities; or contracting of institutions dedicated to the social reintegration of prisoners, as long as the contracted party has a trustworthy ethical and professional reputation and is a nonprofit organization;

XVI – for the acquisition, by a legal entity of domestic public law, of strategic health supplies produced by a foundation whose purpose, as provided for in the statute or bylaws, is to support a direct Public entity, its independent agency, or foundation in projects related to education, research, continuing education, institutional, scientific, and technological development, and encouragement to innovation, including the administrative and financial management necessary for the execution of these projects, or in partnerships involving technology transfer of strategic products to the SUS, pursuant to item XII of the chapeau of this article, and that have been established for this specific purpose prior to the date of effectiveness of this Law, as long as the contracted price is consistent with market prices.

Paragraph 1. For purposes of assessing the amounts that meet the limits referred to in items I and II of the chapeau of this article, the following shall be observed:

I – the aggregate amount disbursed in the financial year by the corresponding management unit;

II – the aggregate expenses made with similar objects, understood as those related to contracting in the same field of activity.

Paragraph 2. The amounts referred to in items I and II of the chapeau of this article shall be duplicate for purchases, works, and services contracted by a public consortium or an independent agency or foundation qualified as executive agencies by law.

Paragraph 3. The contracting referred to in items I and II of the chapeau of this article shall be preferably preceded by the publication of the notice on an official website, during at least three (3) business days, specifying the intended object and expressing the interest of the Administration in

obtaining additional proposals from any interested parties, and the most beneficial proposal should be selected.

Paragraph 4. The contracting referred to in items I and II of the chapeau of this article shall be preferably paid using a payment card, a statement of which shall be disclosed and made available to the public on the National Public Procurement Portal (PNCP).

Paragraph 5. The non-requirement provided for in sub-item “c” of item IV of the chapeau of this article, when applied to engineering works and services, shall follow special procedures established in a specific regulation.

Paragraph 6. For the purposes of item VIII of the chapeau of this article, the contracting without a procurement process is deemed to be an emergency when it is necessary to maintain the continuity of the public service; the contracting shall be at market prices, pursuant to article 23 of this Law, and the necessary measures for the conclusion of the procurement process shall be adopted, without prejudice to the assessment of the responsibility of the public officials that have caused the emergency situation.

Paragraph 7. The provisions of paragraph 1 of this article do not apply to contracting of up to eight thousand Reais (BRL8,000.00) for services of maintenance of motor vehicles owned by the contracting body or entity, including the supply of particles

## **CHAPTER IX**

### **DISPOSALS**

Article 76. The disposal of Public properties, conditioned to the existence of a duly justified public interest, shall be preceded by an assessment and comply with the following rules:

I – in the case of real properties, including those owned by independent agencies and foundations, it shall require legislative authorization and shall depend on a procurement process on an auction basis, and the procurement process is not required in case of:

- a) payment in kind;
- b) donation, permitted exclusively to another Public body or entity, at any level of government, except as provided for in sub-items “f”, “g”, and “h” of this item;
- c) exchange for other real properties that meet the requirements related to the essential purposes of the Administration, provided that the difference ascertained does not exceed half the price of the real property to be offered by the Federal Government, according to prior valuation, and that the relevant amounts are returned, when applicable;
- d) investiture;
- e) sale to another Public body or entity, at any level of government;
- f) disposal, whether free or burdensome, fee farm, concession of rights in rem to use, rent, and permission to use residential properties built under, allocated to, or effectively used in housing or land title regularization programs of social interest developed by a Public body or entity;

g) disposal, whether free or burdensome, fee farm, concession of rights in rem to use, rent, and permission to use local commercial properties with an area of up to two hundred and fifty square meters (250 m<sup>2</sup>) and intended for land title regularization programs of social interest developed by a Public body or entity;

h) disposal and concession of a right in rem to use, whether free of charge or burdensome, public rural land of the Federal Government and the National Institute of Colonization and Agrarian Reform – Incra where there are occupancies up to the limit referred to in paragraph 1 of article 6 of Law No. 11,952 of June 25, 2009, for purposes of land title regularization, once the legal requirements are met;

i) recognition of land tenure as referred to in article 29 of Law No. 6,383 of December 7, 1976, by initiative and resolution of the competent Public entities;

j) recognition of property ownership and recognition of land tenure as referred to in Law No. 13,465 of July 11, 2017;

II – in the case of personal properties, it shall depend on a procurement process on an auction basis, and the procurement process is not required in case of:

a) donation, permitted exclusively for purposes and use of social interest, after assessment of the socio-economic opportunity and convenience with respect to the choice of another form of disposal;

b) exchange, permitted exclusively between Public agencies or entities;

c) sale of shares, which may be exchange traded, pursuant to the specific laws and regulations;

d) sale of bonds, as provided for in the applicable laws and regulations;

e) sale of goods manufactured or marketed by Public entities as a result of their purposes;

f) sale of materials and equipment with no foreseeable use by whoever sells them to other Public agencies or entities.

Paragraph 1. The disposal of Public real properties whose acquisition had been derived from legal procedures or payment in kind shall remove the need for legislative authorization and require only prior assessment and a procurement process on an auction basis.

Paragraph 2. The real properties donated based on sub-item “b” of item I of the chapeau of this article, once the reasons that supported their donation ceased, will revert to the donor legal entity’s assets and properties, and its disposal by the beneficiary is prohibited.

Paragraph 3. The Administration may also grant the title of the right in rem to use real property, without a procurement process, when the use is by:

I – another Public body or entity, regardless of the location of the property;

II – an individual who, under the law, a regulation or normative act of the competent authority, has implemented the minimum requirements of land cultivation, continuous and peaceful occupation, and direct exploitation of the rural area, pursuant to the limit referred to in paragraph 1 of article 6 of Law No. 11,952 of June 25, 2009;

Paragraph 4. The application of the provisions in item II of paragraph 3 of this article shall not require legislative authorization and shall be subject to the following conditions:

I – application exclusively to areas provenly held by an individual prior to December 1, 2004;

II – submission to the other requirements and restraints of the legal and administrative regime of land title regularization and allocation of public land;

III – prohibition on concessions for exploitation activities not contemplated in the agrarian laws, in the laws related to allocation of public land, or in the legal or administrative rules of ecological and economic zoning;

IV – provision for the automatic termination of the concession, without requiring a notice, in case of declaration of public use, public need, or social interest;

V – application exclusively to real properties located in rural areas and no subject to any prohibitions, restraints, or obstacles to its exploitation through cattle and crop raising activities;

VI – limitation to the areas referred to in paragraph 1 of article 6 of Law No. 11,952 of June 25, 2009, and the procurement process is required for larger areas;

VII – accumulation with areas resulting from the case provided for in sub-item “i” of item I of the chapeau of this article up to the limit set forth in item VI of this paragraph.

Paragraph 5. Investiture, for the purposes of this Law, is:

I – the disposal, to the owner of a neighboring property, of the remaining area or the area resulting from public works that becomes useless on an isolated basis, for a price never lower than that of the evaluation and never higher than fifty percent (50%) of the maximum amount allowed for the waiver of the procurement process for goods and services provided for in this Law;

II – the disposal, to the direct lawful owners or, in their absence, to the Government, of residential properties built in urban centers bordering a hydro power plant, provided that they are deemed unnecessary in the operational phase of the plant and do not fall under the category of assignable assets at the end of the concession.

Paragraph 6. The donation with charge shall be made through a procurement process and its documents shall mandatorily include the charges, the term for its execution, and the reversal clause, under penalty of invalidity of the act, and the procurement process is not required in case of a duly justified public interest.

Paragraph 7. In the event provided for in paragraph 6 of this article, in case the donee needs to provide the property as a guarantee under a credit facility, the reversal clause and other obligations shall be guaranteed by a second-lien mortgage to the benefit of the donor.

Article 77. For the sales of real properties, the right of first refusal shall be ensured to the supplier that, subject to all rules of the tender documentation, evidences the occupancy of the property object of the procurement process.

## **CHAPTER X**

### **ANCILLARY INSTRUMENTS**

#### **Section I**

##### **Ancillary Procedures**

Article 78. The following are ancillary procedures of the procurement processes and contracting governed by this Law:

- I – registration;
- II – pre-qualification;
- III – procedure for expression of interest;
- IV – price registration system;
- V – register of information.

Paragraph 1. The ancillary procedures referred to in the chapeau of this article shall meet clear and objective criteria defined in a regulation.

Paragraph 2. The evaluation resulting from the ancillary procurement procedures provided for in items II and III of the chapeau of this article shall follow the same procurement procedures.

#### **Section II**

##### **Registration**

Article 79. Registration may be used in the following contracting cases:

- I – parallel and non-exclusive contracts: case in which the execution of simultaneous contracting under standard conditions is feasible and beneficial to the Administration;
- II – selection at the discretion of third parties: case in which the selection of the contracted party is under the responsibility of the direct beneficiary of the service provided;
- III – in highly volatile markets: case in which the constant variation of the price for the services provided and of the conditions of the contracting renders the selection of an agent using a procurement process unfeasible.

Sole paragraph. The procedures for registration shall be defined in a regulation, with due regard to the following rules:

I – the Administration shall publish the public notice and make it available to the public on an official website, in order to allow permanent registration of new interested parties;

II – in the event provided for in item I of the chapeau of this article, when the object does not allow the immediate and simultaneous contracting of all accredited parties, the objective criteria for distribution of the demand shall be adopted;

III – the public notice shall provide for standard contracting conditions and, in the events provided for in items I and II of the chapeau of this article, it shall define the amount of the contracting;

IV – in the event provided for in item III of the chapeau of this article, the Administration shall register the market quotations effective at the time of the contracting;

V – the contracted object shall not be assigned to third parties without express authorization of the Administration;

VI – the report by any of the parties shall be allowed within the terms established in the tender documentation.

### **Section III**

#### **Pre-Qualification**

Article 80. The pre-qualification is the technical and administrative procedure to select in advance:

I – suppliers that have the qualification conditions to participate in a future procurement process or a procurement process related to objectively defined service or work programs;

II – goods that meet the technical or quality requirements established by the Administration.

Paragraph 1. In the pre-qualification, the following shall be observed:

I – when it is open to suppliers, the documents already present in the register of information may be waived;

II – when it is open to goods, proof of quality may be required.

Paragraph 2. The pre-qualification procedure shall remain open for the registration of interested parties.

Paragraph 3. Regarding the pre-qualification procedure, the following shall be included in the tender documentation:

I – the minimum information required for definition of the object;

II – the method and form of the future procurement process, and the evaluation criteria;

Paragraph 4. The documents shall be submitted to an entity or commission appointed by the Administration, which shall examine them within no more than ten (10) business days and determine any corrections or resubmission of documents, when applicable, aiming at increasing the competition.

Paragraph 5. The pre-qualified goods and services shall be part of the Administration's goods and services catalog.

Paragraph 6. The pre-qualification may be made in groups or segments, according to the suppliers' expertise.

Paragraph 7. The pre-qualification may be in whole or in part, covering some or all technical or eligibility requirements of the contracting, and, in any event, equal conditions are ensured to all competitors.

Paragraph 8. Regarding the term, the pre-qualification shall be effective:

I – for a maximum of one (1) year, and it may be updated at any time;

II – for a term not longer than the effective term of the documents submitted by the interested parties.

Paragraph 9. The list of pre-qualified suppliers and goods shall mandatorily be published and made available to the public.

Paragraph 10. The procurement process that follows the pre-qualification procedure may be restricted to pre-qualified suppliers and goods.

## **Section IV**

### **Procedure for Expression of Interest**

Article 81. The Administration may request from the private sector, through an open procedure for expression of interest to be initiated with the publication of a public notice, the filing and carrying out of studies, investigations, surveys, and projects for innovative solutions that contribute to matters of public relevance, pursuant to the applicable regulations.

Paragraph 1. The studies, investigations, surveys, and projects related to the contracting and useful for the procurement process carried out by the Administration or with its authorization shall be available for the interested parties, and the winner of the procurement process shall indemnify the corresponding expenses, as specified in the tender documentation.

Paragraph 2. The carrying out, by the private sector, of studies, investigations, surveys, and projects as a result of the procedure for expression of interest provided for in the chapeau of this article:

I – shall not provide whoever carries it out with a preference right in the procurement process;

II – shall not impose on the government an obligation to carry out the procurement process;

III – shall not imply, by itself, a right to have the amounts involved in the preparation refunded;

IV – shall only be paid by the winner of the procurement process, and the collection of amounts from the government is prohibited in any event.

Paragraph 3. In order to accept the products and services referred to in the chapeau of this article, the Administration shall prepare a well-grounded opinion evidencing that the product or service provided is proper and sufficient for the object, that the premises adopted are consistent with the real needs of the entity, and that the proposed method is the one that ensures most savings and advantage among the other possible ones.

Paragraph 4. The procedure provided for in the chapeau of this article may be restricted to startups, which are individual micro-entrepreneurs, micro-enterprises, and small-sized companies, of an emerging nature and with great potential, dedicated to research, development, and implementation of new products or services based on innovative technological solutions that may cause a high impact, and prior validation is required in the final selection of the innovation, supported by objective metrics, in order to evidence the meeting of the Administration's needs.

## **Section V**

### **Price Registration System**

Article 82. The tender documentation for registration of prices shall observe the general rules of this Law and shall provide for:

I – the specificities of the procurement process and its object, including the maximum amount of each item that may be acquired;

II – the minimum amount to be quoted of units of goods or, in case of services, of measurement units;

III – the possibility to charge different prices:

- a) when the object is executed or delivered in different locations;
- b) based on the form and place of storage;
- c) when a variable quotation is accepted due to the size of the batch;
- d) for other reasons justified in the process;

IV – the possibility for the supplier to offer or not a proposal in quantities lower than the maximum quantities established in the tender documentation, being the supplier bound to the quantities proposed;

V – the evaluation criterion of the procurement process, which shall be the lowest price or the highest discount based on a list of prices used in the market;

VI – the conditions for changing registered prices;

VII – the registration of more than one supplier or service provider, provided that they accept to quote the object for a price equal to the winning supplier, and the preference for contracting is ensured based on the ranking;

VIII – the prohibition on the participation of the body or entity in more than one tender proposal with the same object during the effective term of the one in which it is already participating, except in case of a tender proposal that has registered quantities lower than the maximum established in the tender documentation;

IX – the events of cancellation of the tender proposal and its consequences.

Paragraph 1. The evaluation criterion by the lowest price by set of items shall only be adopted when the award by item proves unfeasible, in addition to its technical and economic advantage, and the criterion of acceptability of maximum unit prices shall be indicated in the tender documentation.

Paragraph 2. In the event referred to in paragraph 1 of this article, pursuant to the parameters established in paragraph paragraphs 1, 2, and 3 of article 23 of this Law, the later contracting of a specific item included in a set of items shall require prior market research and evidence of its advantage before the body or entity.

Paragraph 3. The tender proposal whose indication is limited to contracting units, with no indication of the total amount to be acquired, is only allowed in the following situations:

I – when it is the first procurement process for the object and the body or entity does not have a record of previous demand;

II – in case of perishable food;

III – if the service is integrated into the supply of goods.

Paragraph 4. In the situations referred to in paragraph 3 of this article, the indication of the maximum amount of the expense is mandatory and the participation of another body or entity in the tender proposal is prohibited.

Paragraph 5. The price registration system may be used for the contracting of goods and services, including engineering works and services, pursuant to the following conditions:

I – prior extensive market research;

II – selection made in accordance with the procedures provided for in the applicable regulations;

III – mandatory development of a control routine;

IV – periodic update of the prices registered;

V – definition of the effective term of the tender proposal;

VI – inclusion, in a tender proposal, of the supplier that accepts to quote for the goods and services prices equivalent to those of the winning supplier in the ranking sequence of the procurement process and inclusion of the supplier that keeps its original proposal.

Paragraph 6. The price registration system may, pursuant to the applicable regulations, be used in the events of non-applicability and waiver of a procurement process for the acquisition of goods or contracting of services by more than one body or entity.

Article 83. The existence of registered prices shall entail a commitment to supply under the established conditions, but it shall not bind the Administration to contract, and the carrying out of the specific procurement process for the intended acquisition is optional, provided that it is duly justified.

Article 84. The tender proposal shall be effective for one (1) year and may be extended, for an equal period, provided that the beneficial price is evidenced.

Sole paragraph. The effectiveness of the contract arising from the tender proposal shall be established in compliance with its provisions.

Article 85. The Administration may contract the provision of engineering works and services through the price registration system, provided that the following requirements are met:

I – existence of a standard design, without technical and operational complexity;

II – permanent or frequent need for works or services to be contracted.

Article 86. The managing body or entity, during the preparatory stage of the procurement process, for purposes of the tender proposal, shall carry out a public procedure to receive intentions to get tender proposals in order to enable, pursuant to the applicable regulations, for a minimum term of eight (8) business days, the participation of other entities or agencies in the respective procurement process and determine the total estimated quantities of the contracting.

Paragraph 1. The procedure set forth in the chapeau of this article shall not be necessary when the managing body or entity is the only contracting party.

Paragraph 2. If the agencies and entities do not participate in the procedure provided for in the chapeau of this article, they may adhere to the tender proposal as non-participants, pursuant to the following requirements:

I – submission of the reasons for the advantage of the adherence, including in situations of probable lack of supplies or discontinuity of a public service;

II – evidence that the amounts registered are consistent with the market amounts, pursuant to article 23 of this Law;

III – prior consultation and acceptance of the managing body or entity and of the supplier.

Paragraph 3. The option ensured by paragraph 2 of this article shall be limited to federal, state, district, and municipal Public agencies and entities that wish to adhere as non-participants to the tender proposal of a federal, state, or district managing body or entity.

Paragraph 4. The additional contracting or acquisitions referred to in paragraph 2 of this article may not exceed, by body or entity, fifty percent (50%) of the quantities of the items in the public notice registered in the tender proposal for the managing body and the participating entities.

Paragraph 5. The quantities arising from the adherences to the tender proposal referred to in paragraph 2 of this article may not exceed, in full, twice the quantities of each item registered in the tender proposal for the managing body and the participating entities, regardless of the number of non-participating entities that adhere thereto.

Paragraph 6. The adherence to the tender proposal of a managing body or entity of the Federal Government by state, district, and municipal Public agencies and entities may be required for purposes of voluntary transfers, and it shall not be subject to the limit referred to in paragraph 5 of this article if it is intended for the decentralized execution of a federal project or program and the compatibility of the prices registered with market prices is evidenced pursuant to article 23 of this Law.

Paragraph 7. For emergency acquisition of medicines and medical and hospital consumables by federal, state, district, and municipal Public agencies and entities, the adherence to the tender proposal managed by the Ministry of Health shall not be subject to the limit referred to in paragraph 5 of this article.

Paragraph 8. The federal Public agencies and entities may not adhere to the tender proposal managed by a state, district, or municipal body or entity.

## **Section VI**

### **Registry of Information**

Article 87. For purposes of this Law, the Public agencies and entities shall use the unified registry of information available in the National Public Procurement Portal (PNCP), for purposes of the consolidated registration of suppliers, as provided for in the applicable regulations.

Paragraph 1. The unified registry of information shall be public, widely publicized, and permanently open to the interested parties, and a public call shall be made online, at least annually, to update current information and register new interested suppliers.

Paragraph 2. A contracting body or entity shall not require supplementary registration for access to the tender documentation and attachments.

Paragraph 3. The Administration may carry out a procurement process restricted to registered suppliers, as long as the criteria, conditions, and limits set forth in the applicable regulations are respected, as well as wide publicity to the procedures is provided.

Paragraph 4. In the case referred to in paragraph 3 of this article, suppliers registered within the term established in the tender documentation for submission of proposals shall be accepted.

Article 88. When applying, at any time, for registration or update of their information, the interested parties shall provide the necessary elements required for qualification as provided for in this Law.

Paragraph 1. The suppliers, considering their field of operation, shall be classified by categories, subdivided into groups, according to their previously evaluated technical, economic and financial qualification, pursuant to the objective rules disclosed on an official website.

Paragraph 2. Suppliers shall be provided with a certificate, renewable whenever they update the records.

Paragraph 3. The contracted party's fulfillment of obligations shall be assessed by the contracting party, which shall issue a document with evidence of the assessment carried out, evaluating contract performance based on objectively defined and assessed indicators, and any penalties applied, which shall appear in the registry of information in which the supplier is registered.

Paragraph 4. The annotation of the fulfillment of obligations by the contracted party referred to in paragraph 3 of this article shall be conditioned to the implementation and regulation of the record of certification of fulfillment of obligations, which shall allow for objective record-keeping, in compliance with the principles of impersonality, equity, isonomy, disclosure, and transparency, in order to enable the implementation of incentive measures to those suppliers which have excellent performance annotated in their record.

Paragraph 5. The record of the supplier that fails to meet the requirements established by this Law or by regulation may be changed, suspended, or cancelled at any time.

Paragraph 6. The interested party who applies for registration pursuant to the chapeau of this article may participate in a procurement process until the Administration's decision, and the execution of the contract shall be subject to the issuance of the certificate referred to in paragraph 2 of this article.

### **TITLE III**

#### **ADMINISTRATIVE CONTRACTS**

##### **CHAPTER I**

##### **FORMAL CONTRACT REQUIREMENTS**

Article 89. Contracts under this Law shall be governed by their clauses and by the precepts of public law, and, additionally, the principles of the general theory of contracts and the provisions of private law shall also apply.

Paragraph 1. Every contract shall mention the names of the parties and their representatives, the purpose, the act that authorized its drawing-up, procurement process or direct award contracting number, and the submission of the contracting parties to the rules of this Law and the contract clauses.

Paragraph 2. Contracts shall clearly and precisely establish the conditions for their execution, expressed in clauses defining the rights, obligations, and responsibilities of the parties, pursuant to the terms of the tender documentation and of the winning proposal, or to the terms of the rule that authorized the direct award contracting and of the corresponding proposal.

Article 90. The Administration shall duly call the winning supplier to sign the contract or to accept or withdraw the equivalent instrument within the term and under the conditions established in

the tender documentation, under penalty of losing the right to the contracting, without prejudice to the sanctions provided for in this Law.

Paragraph 1. The period to respond to the call may be extended one (1) time, for the same period, upon request by the party before its expiration, duly justified, and as long as the reason presented is accepted by the Administration.

Paragraph 2. When the called supplier does not sign the contract or does not accept nor withdraws the equivalent instrument within the term and under the conditions established, the Administration may call the remaining suppliers, in the ranking order, to execute the contract under the conditions proposed by the winning supplier.

Paragraph 3. Once the effective term of the proposal indicated in the tender documentation has elapsed without a call for the contracting, the suppliers shall be released from the commitments made.

Paragraph 4. If none of the suppliers accepts the contracting pursuant to paragraph 2 of this article, the Administration, based on the estimated amount and its eventual adjustment pursuant to the tender documentation, may:

I – call the remaining suppliers for negotiation, in order of ranking, aiming at obtaining the best price, even if it is higher than the price of the grantee;

II – award and execute the contract under the conditions offered by the remaining suppliers, following the ranking order, when the negotiation of the best condition is frustrated.

Paragraph 5. The grantee's unreasonable refusal to sign the contract, accept or withdraw the equivalent instrument within the term established by the Administration shall characterize full failure to perform the obligation undertaken, and shall subject him/her to the penalties established by law and to the immediate loss of the bid bond to the benefit of the supplying body or entity.

Paragraph 6. The rule in paragraph 5 shall not apply to the remaining suppliers called pursuant to item I of paragraph 4 of this article.

Paragraph 7. The Administration may call the other ranked suppliers for the contracting of the remainder of the works, services, or supply as a result of contract termination, pursuant to the same criteria established in paragraphs 2 and 4 of this article.

Article 91. The contracts as amended shall have a written form and shall be attached to the process that has originated the contracting, and shall be published and made available to the public on an official website.

Paragraph 1. The contracts and addenda may be kept in secrecy when this is essential for the security of the society and the Government, pursuant to laws and regulations governing access to information.

Paragraph 2. Contracts related to security interests in real properties shall be formalized by means of a public deed registered in a notary public office, and their content shall be published and made available to the general public on an official website.

Paragraph 3. Electronic forms shall be accepted in the execution of contracts and addenda, pursuant to the requirements provided for in the applicable regulations.

Paragraph 4. Before formalizing or extending the term of the contract, the Administration shall check the contracted party's tax compliance certificate, consult the National Register of Ineligible and Suspended Companies (Ceis) and the National Register of Punished Companies (Cnep), issue clearance certificates for the disreputability, disqualification, and labor debts, and attach them to the respective process.

Article 92. Every contract shall have clauses providing for:

I – the object and its characteristics;

II – the reference to the tender documentation and the winning supplier's proposal or to the rule authorizing the direct award contracting and the respective proposal;

III – the laws and regulations applicable to the performance of the contract, including regarding omitted cases;

IV – the contractual arrangement or supply method;

V – the price and payment conditions, the criteria, base date and frequency of the price adjustment, the criteria for monetary adjustment between the date of performance of the obligations and the date of effective payment;

VI – the criteria and frequency of assessment, when applicable, and the deadlines for clearance and payment;

VII – the deadlines for beginning the stages of execution, completion, delivery, observation, and final acceptance, as the case may be;

VIII – the credit against which the expense shall be made, indicating the functional programmatic classification and the economic category;

IX – the risk matrix, when applicable;

X – the deadline to reply to the request for renegotiation of prices, when applicable;

XI – the deadline to reply to the request for restoration of the economic and financial balance, when applicable;

XII – the guarantees provided to ensure its full execution, when required, including those that may be provided by the contracted party in case of early payments;

XIII – the minimum warranty term for the object, pursuant to the minimum terms established in this Law and the applicable technical standards, and the technical support and maintenance conditions, when applicable;

XIV – the rights and responsibilities of the parties, the applicable penalties, and the amount of the fines and their calculation bases;

XV – the import conditions and the date and exchange rate for conversion, when applicable;

XVI – the contracted party's obligation to maintain, during all the time of performance of the contract, consistently with the obligations assumed thereby, all the conditions required for eligibility to the procurement process, or for qualification to a direct award contracting;

XVII – the contracted party's obligation to meet the quota requirements provided by law, as well as by other specific regulations, for persons with disabilities, for persons rehabilitated under Social Security, and for apprentices;

XVIII – the contract management model, pursuant to the requirements defined in the applicable regulations;

XIX – the cases of termination.

Paragraph 1. The contracts entered into by the Public Administration with individuals or legal entities, including those domiciled abroad, shall include a clause declaring the jurisdiction of the Administration's headquarters as competent to settle any contract issues, except in the following cases:

I – international bidding process for acquisition of goods and services whose payment is made with the product of funding granted by an international financial agency of which Brazil is part or by a foreign cooperation agency.

II – contracting with a foreign company to purchase equipment manufactured and delivered abroad preceded by the authorization of the Head of the Executive Branch;

III – acquisition of goods and services made by administrative units headquartered abroad.

Paragraph 2. According to the specific characteristics of the object and its contractual arrangement, the contract shall include a clause that provides for a period before the issue of the service order to verify outstanding issues, release areas, or adopt other measures applicable to the regularity of its execution.

Paragraph 3. Regardless of the term, the contract shall include a clause that provides for the price adjustment index, with a base date linked to the date of the estimated budget, and more than one specific or sector index may be established according to the market reality of the relevant inputs.

Paragraph 4. For contracting of continuous services, after the minimum interval of one (1) year, the criteria for price adjustment shall be:

I – strict adjustment, when there is no dedicated labor or predominance of labor, using specific or sector indexes;

II – renegotiation, when there is dedicated labor or predominance of labor, upon an analytical demonstration of the variation in costs.

Paragraph 5. For contracting of engineering works and services, whenever consistent with the contractual arrangement, the measurement shall occur monthly.

Paragraph 6. For contracting of continuous services with dedicated labor or predominance of labor, the term for response to the request for price renegotiation shall preferably be one (1) month of the date of supply of the documents provided for in paragraph 6 of article 135 of this Law.

Article 93. For contracting of specialized projects or technical services, including the ones that include the development of programs and Internet applications for computers, machines, equipment, and device for the treatment and communication of information (software) – and the relevant related technical documents – the author shall assign all property rights related thereto to the Public Administration, case in which they may be freely used and changed thereby in other events, with no need for a new authorization of the author.

Paragraph 1. When the project refers to intangible technology assets, not subject to property rights, the assignment of the rights referred to in the chapeau of this article shall include all data, documents, and pieces of information related to the technology for creating, developing, mounting it to any kind of physical support, and applying the assets.

Paragraph 2. The Public Administration may refrain from requiring the assignment of rights referred to in the chapeau of this article when the object of the contracting involves research and development of scientific, technological, or innovative nature, considering the principles and mechanisms established by Law No. 10,973 of December 2, 2004.

Paragraph 3. In case of further change in the design by the Public Administration, the author shall be informed, and the records shall be filed with the applicable agencies or entities.

Article 94. The publication in the National Public Procurement Portal (PNCP) is an essential condition for the effectiveness of the contract and its amendments, and it shall occur within the following terms of the date of its execution:

I – twenty (20) business days, for procurement processes;

II – ten (10) business days, for direct award contracting.

Paragraph 1. The contracts executed in the event of urgency shall become effective as of its execution shall be published within the terms provided for in items I and II of the chapeau of this article, under penalty of nullity.

Paragraph 2. The publication referred to in the chapeau of this article, when related to the contracting of a professional artist due to non-requirement, shall identify the fees for the artist, musicians, or band, if any, the costs of the transportation, accommodation, infrastructure, logistics of the event, and other specific expenses.

Paragraph 3. For works, the Administration shall publish, on an official website, within twenty-five (25) business days of the execution of the contract, the quantities, unit prices, and total prices contracted, and, within forty-five (45) business days of the completion of the agreement, the quantities used and prices charged.

Paragraph 4. (VETOED).

Paragraph 5. (VETOED).

Article 95. The contract is mandatory, except in the following cases, in which the Administration may replace it with another proper instrument, such as a letter of agreement, funds citation, purchase authorization, or service order:

I – non-requirement of bidding depending on the amount;

II – purchases with immediate and full delivery of the goods acquired and that do not cause future obligations, including regarding technical support, regardless of the amount.

Paragraph 1. The provisions in article 92 of this Law apply, as appropriate, to the events of replacement of the contract.

Paragraph 2. The verbal contract with the Administration is null and void, except for small purchases or provision of services immediately paid, i.e., services which amount does not exceed ten thousand Reais (R\$10,000.00).

## **CHAPTER II**

### **GUARANTEES**

Article 96. At the discretion of the competent authority, in each case, and as provided for in the tender documentation, the provision of a guarantee in the contracting of works, services, and supplies may be required.

Paragraph 1. The contracted party shall choose one of the following types of guarantee:

I – money or book-entry government bonds, registered in a centralized clearance and custody system authorized by the Central Bank of Brazil and valued at their economic values, as defined by the Ministry of Finance, held in escrow;

II – performance bond;

III – bank guarantee issued by a bank or financial institution duly authorized to operate in the Country by the Central Bank of Brazil.

Paragraph 2. In the event of suspension of the contract as a result of an order or non-performance by the Administration, the contracted party shall be released from the obligation to renew the guarantee or endorse the insurance policy until an order to resume the execution or performance by the Administration.

Paragraph 3. The tender documentation shall set a minimum term of one (1) month of the date of approval of the procurement process and before the execution of the contract for the contracted party to provide a guarantee when it chooses the type provided for in item II of paragraph 1 of this article.

Article 97. The performance bond aims at ensuring full performance of the obligations undertaken by the contracted party before the Administration, including the fines, losses, and damages arising from non-performance, pursuant to the following rules in the contracting governed by this Law:

I – the effectiveness of the policy shall be equal to or higher than the one established in the master contract and shall follow the amendments related to the effectiveness hereof upon issuance of the relevant endorsement by the insurance company;

II – the performance bond shall remain in effect even if the contracted party has not paid the premium on the agreed dates.

Sole paragraph. For contracting of continuous services or continuous supply of goods and services, the replacement of the performance bond policy on the date of renewal or anniversary shall be permitted, as long as the same conditions and coverage of the policy in effect are maintained and as long as no term is uncovered, except as provided for in paragraph 2 of article 96 of this Law.

Article 98. For contracting works, services, and supplies, the guarantee may be up to five percent (5%) of the initial amount of the contract, and an increase in this percentage of up to ten percent (10%) is authorized, as long as it is justified upon an analysis of the technical complexity and the risks involved.

Sole paragraph. For contracting continuous services and supplies effective for more than one (1) year, as well as the subsequent extensions, the annual amount of the contract shall be used to define and apply the percentages provided for in the chapeau of this article.

Article 99. For contracting major engineering works and services, the provision of a performance bond, with a resumption clause as provided for in article 102 of this Law may be required with a percentage corresponding to up to thirty percent (30%) of the initial amount of the contract.

Article 100. The guarantee provided by the contracted party shall be released or refunded after faithful performance of the contract or after cancellation by exclusive fault of the Administration and, in case of cash, it shall be adjusted for inflation.

Article 101. In case of contracts that involve the delivery of goods by the Administration, of which the contracted party shall be the depositary, the value of such goods shall be added to the amount of the guarantee.

Article 102. For contracting engineering works and services, the tender documentation may require the provision of a performance bond and provide for the insurance company's obligation to take over the execution and complete the object of the contract, in case of non-performance by the contracted party, case in which:

I – the insurance company shall sign the contract, including the amendments, as intervening consenting party, and it may:

- a) have free access to the facilities in which the master contract is executed;
- b) monitor the execution of the master contract;
- c) have access to technical and accounting audit;
- d) require clarification from the technician in charge of the work or supply;

II – the issue of a pledge on behalf of the insurance company, or whom it appoints to complete the contract, shall be authorized as long as its tax compliance is evidenced;

III – the insurance company may subcontract the completion of the contract in whole or in part

Sole paragraph. In the event of non-performance by the contracted party, the following provisions shall apply:

I – if the insurance company executes and completes the object of the contract, it shall be exempted from the obligation to pay the amount insured indicated in the policy;

II – if the insurance company does not take over the execution of the contract, it shall pay the entire amount insured indicated in the policy.

### **CHAPTER III**

#### **RISK ALLOCATION**

Article 103. The contract may identify the expected and likely contractual risks and anticipate a risk allocation matrix, allocating them between the contracting party and the contracted party, indicating the ones to be assumed by the public sector or the private sector or the ones to be shared.

Paragraph 1. The risk allocation referred to in the chapeau of this article shall take into account, pursuant to the obligations and charges assigned to the parties in the contract, the nature of the risk, the beneficiary of the related parts, and the capacity of each sector to manage the risk better.

Paragraph 2. The risks covered by insurance companies shall be preferably transferred to the contracted party.

Paragraph 3. The allocation of contract risks shall be quantified for purposes of the forecast of the effects of their costs on the estimated contracting amount.

Paragraph 4. The risk allocation matrix shall define the initial economic and financial balance of the contract regarding supervening events and shall be observed when solving any demands of the parties.

Paragraph 5. Whenever the conditions of the contract and the risk allocation matrix are met, the economic and financial balance shall be deemed maintained, and the parties shall waive the requests for restoration of balance related to the risks assumed, except with respect to:

I – the unilateral amendments determined by the Administration in the events in item I of the chapeau of article 124 of this Law;

II – the increase or decrease, provided by subsequent laws and regulations, in the taxes directly paid by the contracted party as a result of the contract.

Paragraph 6. In the allocation referred to in the chapeau of this article, methods and standards normally used by public and private entities may be adopted, and the ministries and offices

supervising the Public agencies and entities may define the parameters and detailed procedures required for identification, allocation, and financial quantification thereof.

## **CHAPTER IV**

### **PREROGATIVES OF THE ADMINISTRATION**

Article 104. The legal regime of the contracts as established by this Law provides the Administration, in what concerns these contracts, with the prerogatives to:

I – unilaterally amend them in order to improve their alignment to public interest purposes, with due respect to the contracted party's rights;

II – unilaterally terminate them in the cases specified in this Law;

III – inspect their performance;

IV – impose sanctions caused by the full or partial non-execution of the arrangement;

V – temporarily occupy personal and real properties and use personnel and services linked to the object of the contract in the events of:

a) risk to the provision of essential services;

b) need to prevent administrative verification of contractual faults by the contracted party, including after the termination of the contract.

Paragraph 1. The economic, financial, and monetary clauses of the contracts may not be amended without the prior agreement of the contracted party.

Paragraph 2. In the event of item I of the chapeau of this article, the economic and financial clauses of the contract shall be reviewed in order to maintain the balance of the contract.

## **CHAPTER V**

### **EFFECTIVENESS OF THE CONTRACTS**

Article 105. The effectiveness of the contracts governed by this Law shall be provided for in the tender documentation, and, upon contracting and every financial year, the availability of budget credits, as well as the provision in the Multi-Year Plan after one (1) financial year, shall be observed.

Article 106. The Administration may enter into contracts with an effectiveness of up to five (5) years in the events of continuous services and supplies, pursuant to the following guidelines:

I – the relevant authority of the contracting body or entity shall attest the greatest economic advantage sought as a result of the multi-year contracting;

II – the Administration shall attest, upon contracting and at every financial year, the existence of budget credits linked to the contracting and the advantage in its maintenance;

III – the Administration shall have the option to terminate the contract, without any cost, when it does not have budget credits for its continuity or when it understands that the contract does not offer an advantage anymore.

Paragraph 1. The termination mentioned in item III of the chapeau of this article shall occur only on the next anniversary of the contract and it may not occur in less than two (2) months of such date.

Paragraph 2. The provisions in this article apply to the lease of equipment and the use of software.

Article 107. The contracts for continuous services and supplies may be extended successively, pursuant to the maximum effectiveness of ten years, as long as it is provided for in the tender documentation and as the relevant authority attests that the conditions and prices remain beneficial to the Administration, and the negotiation with the contracted party or the termination of the contract without any cost to any of the parties is permitted.

Article 108. The Administration may enter into contracts with effectiveness of up to ten (10) years in the events provided for in sub-items “f” and “g” of item IV and items V, VI, XII, and XVI of the chapeau of article 75 of this Law.

Article 109. The Administration may establish the effectiveness as an indefinite term in the contracts in which it is the user of a public service offered under a monopoly, as long as the existence of budget credits linked to the contracting is evidenced every financial year.

Article 110. For contracting that generate revenue and for an efficiency contract that generates economy to the Administration, the effectiveness shall be:

I – up to ten (10) years for contracts with no investment;

II – up to thirty-five (35) years for contracts with investment, which are the ones that entail the preparation of permanent fixtures made at the exclusive expense of the contracted party, to be inured to the benefit of the properties of the Public Administration at the end of the contract.

Article 111. For contracting that provides for the completion of a pre-defined scope, the effectiveness shall be automatically extended when its object is not completed within the period agreed in the contract.

Sole paragraph. When the non-completion is a result of fault by the contracted party:

I – the contracted party shall be in default, and the respective administrative sanctions shall be applied thereto;

II – the Administration may choose to terminate the contract and, in this case, it shall adopt the measures provided by law for the continuous performance of the contract.

Article 112. The contractual terms provided for in this Law neither exclude nor revoke the contractual terms provided by special law.

Article 113. The contract entered into for supply and provision of related services shall have the maximum effectiveness defined by the sum of the term for initial supply or delivery of the work and the term related to the operation and maintenance, which is limited to five (5) years of the date of receipt of the initial object, upon authorization of the extension pursuant to article 107 of this Law.

Article 114. The contract that provides for the continuous operation of structuring systems of information technology may have the maximum effectiveness of fifteen (15) years.

## **CHAPTER VI**

### **EXECUTION OF CONTRACTS**

Article 115. The contract shall be executed faithfully by the parties, in compliance with the clauses agreed and the rules of this Law, and each party shall be liable for the consequences of its full or partial failure to do it.

Paragraph 1. The Administration is prohibited from delaying, without cause, the execution of a work or performance of a service, or any portion thereof, including in the event of investiture of the relevant head of the Executive Branch or a new holder in the contracting body or entity.

Paragraph 2. (VETOED).

Paragraph 3. (VETOED).

Paragraph 4. (VETOED).

Paragraph 5. In case of restraint, order to interrupt or suspend the contract, the implementation schedule shall be extended automatically for the corresponding period, and such circumstances shall be registered by a simple booklet.

Paragraph 6. For contracting works, once the provisions in paragraph 5 are verified for over one (1) month, the Administration shall publish, on an official website and in a plate to be posted at the worksite for easy visualization by citizens, a public warning of interrupted work, with the reason and the persons responsible for the temporary interruption of the object of the contract and the date expected for resumption of execution.

Paragraph 7. The texts with the information referred to in paragraph 6 of this article shall be prepared by the Administration.

Article 116. Throughout the whole execution of the agreement, the contracted party shall comply with the reserve of positions, as provided by law, for persons with disabilities, for persons rehabilitated through Social Security, or for apprentices, as well as the reserve of positions provided for in other specific rules.

Sole paragraph. Upon request by the Administration, the contracted party shall evidence the compliance with the reserve of positions referred to in the chapeau of this article by indicating the employees that took such positions.

Article 117. The execution of the contract shall be monitored and inspected by one (1) or more inspectors of the contract, representatives of the Administration especially appointed pursuant to the

requirements provided for in article 7 of this Law, or by their relevant alternates, and the contracting of third parties to assist and provide information related to this assignment is permitted.

Paragraph 1. The contract inspector shall annotate in a specific record all events related to the performance of the contract, determining whatever may be necessary to rectify the faults or defects observed.

Paragraph 2. The contract inspector shall inform his/her superiors, on time for the adoption of the applicable measures, the situation that requires a decision or measure that exceeds his/her jurisdiction.

Paragraph 3. The contract inspector shall be assisted by the agencies of legal assistance and internal control of the Administration, which shall settle doubts and provide relevant information to prevent risks in the execution of the contract.

Paragraph 4. In the event of contracting of third parties provided for in the chapeau of this article, the following rules shall be observed:

I – the company or professional contracted shall undertake a strict civil liability for the truthfulness and accuracy of the information provided, execute a confidentiality agreement, and may not discharge a duty that is specific and exclusive of a contract inspector;

II – the contracting of third parties shall not exempt the contract inspector from liabilities, within the limits of information received by the third party contracted.

Article 118. The contracted party shall maintain an agent approved by the Administration at the work or service site to represent it in the performance of the contract.

Article 119. The contracted party shall have the obligation to repair, correct, remove, rebuild, or replace, at its expense, in whole or in part, the object of the contract with faults, defects, or errors resulting from its execution or materials used.

Article 120. The contracted party shall be liable for damage caused directly to the Administration or third parties as a result of the execution of the agreement, and shall not exclude or reduce this liability to the inspection or monitoring by the contracting party.

Article 121. The contracted party is exclusively responsible for the labor, social-security, tax, and trade charges arising from the performance of the contract.

Paragraph 1. Failure by the contracted party to pay the labor, tax, and trade charges shall not transfer the responsibility for their payment to the Administration and may not encumber the object of the contract or restrict the rectification and use of the works and buildings, including the registration of properties, except for the case provided for in paragraph 2 of this article.

Paragraph 2. Exclusively for contracting continuous services with dedicated labor, the Administration shall be jointly liable for the social security charges and vicariously liable for the labor charges if any fault is evidenced in the inspection of the performance of the obligations of the contracted party.

Paragraph 3. For contracting continuous services with dedicated labor, in order to ensure the performance of labor obligations by the contracted party, the Administration may, through a provision in the tender documentation or a contract, take the following measures, among others:

I – require a bond, bank guarantee, or performance bond covering unpaid severance pay;

II – condition the payment to the evidence of release from overdue labor obligations related to the contract;

III – deposit amounts to a blocked account;

IV – in case of default, pay directly the labor amounts, which will be deducted from the payment due to the contracted party;

V – establish that the amounts intended for vacation pay, thirteenth salary, legal absences, and severance pay for the employees of the contracted party participating in the performance of the services shall be paid by the contracting party to the contracted party only upon the occurrence of the triggering event.

Paragraph 4. The amounts deposited to the blocked account referred to in item III of paragraph 3 of this article are ineligible for seizure.

Paragraph 5. The payment of social security contributions shall observe the provisions in article 31 of Law No. 8,212 of July 24, 1991.

Article 122. During the performance of the contract, without prejudice to the contractual and legal responsibilities, the contracted party may subcontract parts of the works, services, or supplies up to the limit permitted, in each case, by the Administration.

Paragraph 1. The contracted party shall submit to the Administration documents certifying the technical capacity of the subcontractor, to be evaluated and attached to the records of the relevant proceeding.

Paragraph 2. A regulation or tender documentation may prohibit, restrict, or establish conditions for subcontracting.

Paragraph 3. The subcontracting of an individual or legal entity is prohibited if the former, or the latter's managers, maintain a technical, commercial, economic, financial, labor, or civil connection to the manager of the contracting body or entity or a public official discharging duty in the procurement process or acting in the inspection of the contract, or if they are a spouse, domestic partner or lineal or collateral relative, or relative by consanguinity or affinity, up to the third degree, and this prohibition shall be expressed in the tender documentation.

Article 123. The Administration shall explicitly issue a decision on all requests and complaints related to the execution of the contracts governed by this Law, except for the requests that are clearly inapplicable, merely delaying, or of no interest for the good execution of the contract.

Sole paragraph. Except for a legal provision or contract clause that establishes a specific term, once the discovery phase of the requirement is completed, the Administration shall have one (1) month to decide, and an extension, with cause, is admitted for an equal period.

## CHAPTER VII

### CONTRACT AMENDMENT AND CHANGE OF PRICES

Article 124. The contracts governed by this Law may be reasonably amended upon the following events:

I – unilaterally by the Administration:

- a) in case of changes in the project or specifications, in order to improve their technical alignment to its objectives;
- b) when it is necessary to change the contract amount as a result of a quantitative increase or decrease in its object, within the limits permitted by this Law;

II – by mutual agreement between the parties;

- a) when the replacement of the performance guarantee is convenient;
- b) when it is necessary to modify the contractual arrangement for the works or services, as well as the supply method, considering the technical verification of inapplicability of the original contract terms;
- c) when it is necessary to modify the payment method due to supervening circumstances, provided that the updated initial amount shall be maintained and that no early payment, regarding the fixed financial schedule, may be made without the corresponding supply of goods or execution of works or services;
- d) in order to restore the initial economic and financial balance of the contract in case of Force Majeure, Act of God, or *factum principis* or as a result of unforeseeable or foreseeable facts of priceless consequences, which render the contract unfeasible thereunder, pursuant, in any case, to the objective division of risk as provided by in the contract.

Paragraph 1. If resulting from faults in design, the amendments to the contracts for engineering works and services shall cause an assessment of the responsibility of the technician in charge and employment of necessary measures to redress the damage caused to the Administration.

Paragraph 2. The provision in sub-item “d”, item II, of the chapeau of this article shall apply to the contracting for engineering works and services in case the performance thereof is hindered by delay in conclusion of the procedures of expropriation, vacancy, easement, or environmental permit, under circumstances foreign to the contracted party.

Article 125. Under the unilateral changes referred to in item I, chapeau of article 124 of this Law, the contracted party shall have the obligation to accept, under the same conditions, any increases or decreases of up to twenty-five percent (25%) of the initial amount adjusted in the contract that may affect the works, services, or purchases, and in case the building or equipment is renovated, the limit for increases shall be fifty percent (50%).

Article 126. The unilateral changes referred to in item I, chapeau of Article 124 of this Law may not change the object of the contracting.

Article 127. In case the contract does not include unit prices for works or services that may require amendment, they shall be determined by the general ratio between the amounts in the proposal and in the initial budget of the Administration and the prices used as reference or market prices effective in the date of the amendment, pursuant to the limits provided in article 125 of this Law.

Article 128. In the contracting for engineering works and services, the percentage difference between the total amount of the contract and the global price used as reference shall not be reduced in favor of the contracted party as a result of amendments to the budget spreadsheet.

Article 129. For contract amendments to cancel works, goods, or services, if the contracted party has already purchased the materials and placed them at the worksite, they shall be paid by the Administration at the acquisition costs, duly evidenced and monetarily adjusted, and indemnification for other damage possibly arising from the cancellation may apply, provided that they are duly evidenced.

Article 130. In case there is a unilateral amendment to the contract that increases or decreases charges to the contracted party, the Administration shall restore, in the same amendment, the initial economic and financial balance.

Article 131. The termination of the contract shall not be an obstacle to observe the economic and financial imbalance, in which event a compensation shall be granted pursuant to a compensation agreement.

Sole paragraph. A request for restoration of economic and financial balance shall be prepared while the contract is still in effect and before any possible extension under article 107 of this Law.

Article 132. The execution of the amendment is a condition for the execution of the parts determined by the Administration in the contract by the contracted party, except when there is reasonable need to accelerate its effects, in which case the delivery shall be enforced within no more than one (1) month.

Article 133. In cases where the integrated or semi-integrated contracting is in place, no change to the contractual amounts shall be permitted, except upon the following events:

I – restoration of the economic and financial balance resulting from acts of God or Force Majeure;

II – need to change the design or specifications to improve their technical alignment with the objectives of the contracting, upon request of the Administration, as long as not resulting from mistakes or omissions by the contracted party, according to the limits provided for in article 125 of this Law;

III – need to change the design in the semi-integrated contracting, pursuant to paragraph 5 of article 46 of this Law;

IV – occurrence of a subsequent event allocated in the risk matrix under the responsibility of the Administration.

Article 134. The prices provided in the contract shall be changed, whether increased or decreased, as the case may be, when there may be any taxes or statutory charges are created, amended, or dismissed or upon supervenience of legal provisions after the date the proposal is filed, upon evidence of the repercussion on the prices in the contract.

Article 135. The prices of the contracts for continuous services with dedicated labor or with predominant labor shall be renegotiated to preserve the economic and financial balance, upon analytical evidence of the change in contractual costs, including the date:

I – when the proposal was filed, for market costs;

II – of the agreement, of the collective bargaining agreement, or to the collectively agreed wage rate increase related to the proposal, for labor costs.

Paragraph 1. The Administration shall not be binding on the provisions of collective labor agreements, bargaining agreements, wage increase agreements addressing a non-labor matter, regarding payment of the workers' share in the profits and results of the contract, or that may provide for rights that are not provided by law, such as amounts or mandatory rates of social or security charges, as well as prices of supplies needed for the performance of the activity.

Paragraph 2. The contracting body or entity is shall not be binding on the provisions in collective labor agreements, bargaining agreements, or wage increase agreements addressing obligations and rights that apply only to the contracts executed with the Public Administration.

Paragraph 3. The renegotiation shall observe the minimal interval of one (1) year of the date the proposal was filed or of the date of the last renegotiation.

Paragraph 4. The renegotiation may be divided in as many parts as required, pursuant to the principle of annuality for price adjustment of the contracting, and it may occur at different moments to address cost changes whose annuality occur in different dates, such as those resulting from labor matters and those resulting from supplies required to perform the services.

Paragraph 5. In cases where the contracting involves more than one professional category, the renegotiation referred to in item II of the chapeau of this article shall be divided into as many collective labor agreements, bargaining agreements, or wage increase agreements as necessary for the categories involved in the contracting.

Paragraph 6. The renegotiation shall be preceded by a request by the contracted party, accompanied by analytical evidence of the change by filing the costs and price formation spreadsheet or the new agreement, bargaining agreement, wage increase agreement or regulatory award supporting the renegotiation.

Article 136. Records that do not define amendment to the contract may be executed by a simple Apostille, in which case the execution of the amendment is not required, as in the following cases:

I – change in the contract amount to cover the adjustment or the renegotiation of prices set forth in the very contract;

II – financial updates, compensations, or penalties as a result of the payment conditions provided for in the contract;

III – changes in the corporate name of the contracted party;

IV – commitment of the budget.

## **CHAPTER VIII**

### **CONTRACT TERMINATION EVENTS**

Article 137. The contract shall be terminated, upon formal justification in the records of the proceeding and observation of adversary proceeding and legal defense, in the following cases:

I - failure to perform or misperformance of the standards provided for in the tender documentation or contract clauses or clauses regarding specifications and addressing designs or terms.

II – non-compliance with the regular orders issued by the authority designated to accompany and oversee the execution thereof or by a superior authority;

III – change in the corporate name or in the company’s purpose or structure that may restrict its ability to perform the contract;

IV – adjudication of bankruptcy or insolvency, dissolution of the company or death of the contracted party;

V – Act of God or Force Majeure, duly evidenced, that may impede the performance of the contract;

VI – delay in obtaining the environmental permit or failure to obtain it, or material change in the preliminary design resulting therefrom, even if obtained within the expected period;

VII – delay in clearance of areas subject to expropriation, vacancy, or easement, or impossibility to clear such areas;

VIII – ratios of public interest, justified by the highest authority of the organ or of the contracting party;

IX - failure to perform the obligations regarding the reservation of positions provided by law, as well as other specific rules, for persons with disabilities, for rehabilitated persons under Social Security provision, and apprentices.

Paragraph 1. The regulation may specify procedures and criteria to verify the reasons provided for in the chapeau of this article.

Paragraph 2. The contracted party shall have the right to terminate the contract in the following cases:

I – cancellation by the Administration of works, services, or purchases, entailing a change in the initial amount of the contract beyond the limit permitted in article 125 of this Law;

II – cancellation of the performance of the agreement, by written order of the Administration, for more than three (3) months.

III – repeated cancellations that amount to ninety (90) business days, notwithstanding mandatory payment of compensation for consecutive and unexpected and expected retirements and mobilizations thereunder;

IV – delay of more than two (2) months of the issuance of the invoice, of payments, or installment payments due by the Administration regarding expenses arising from the works, services, or supplies;

V – failure by the Administration to clear the area, place, or object within the terms set forth in the contract, for the performance of the works, services, or supplies, and sources of natural materials specified in the design, including due to delay or failure to perform the obligations assigned to the Administration in the contract regarding the expropriation, de-occupation of public areas, or environmental permitting.

Paragraph 3. The cases providing for termination referred to in items II, III, and IV of paragraph 2 of this article shall observe the following provisions:

I – they shall not be admitted in case of public calamity, severe disturbance of domestic order, or war, as well as when they arise any act or fact employed by the contracted party, in which it has taken part or to which it has contributed;

II – they shall ensure the contracted party has the right to elect to discontinue the performance of the obligations undertaken until the situation is back to normal, permitting restoration of the economic and financial balance of the contract, pursuant to sub-item “d”, item II of the chapeau of article 124 of this Law.

Paragraph 4. The issuers of warranties provided for in article 96 of this Law shall be notified by the contracting party of the start of the administrative proceeding to assess the failure to comply with the contract clauses.

Article 138. The termination of the contract may be:

I – determined by unilateral and written act by the Administration, except in case of recurring failure to comply resulting from its on conduct;

II – agreed, by agreement between the parties, conciliation, mediation, or by a dispute resolution committee, as long as the Administration is interested in doing so;

III – determined by an arbitration award, as a result of commitment clause or arbitration clause, or by court decision.

Paragraph 1. Termination determined by the unilateral act of the Administration and consensual termination shall be preceded by written and justified authorization of the competent authority, recorded in writing in the corresponding proceeding.

Paragraph 2. Upon termination by exclusive fault of the Administration, the contracted party shall be reimbursed for any losses duly evidenced that it may have incurred, and shall be entitled to:

I – relinquishment of the warranty;

II – payments due for the performance of the contract up to the date of termination;

III – payment of the retirement costs.

Article 139. Termination determined by the unilateral act of the Administration may entail, without prejudice to the sanctions provided for in this Law, the following consequences:

I – immediate assumption of the object of the contract, on an “as is” and “where is” basis, by the Administration itself;

II – occupation and use of the site, facilities, equipment, material, and personnel used to perform the contract and necessary for its continuity;

III – enforcement of the contract guarantee to:

a) reimbursement the Public Administration for losses resulting from non-performance;

b) payment of labor, land, and social-security amount, when applicable;

c) payment of fines due to the Public Administration;

d) requirement of assumption of performance and completion of the object of the contract by the insurance company, when applicable;

IV – withholding of the credits arising from the contract up to the limit of the losses caused to the Public Administration and of the penalties imposed.

Paragraph 1. The measures provided for in items I and II of the chapeau of this article are at the Administration’s discretion, which may proceed with the works or services directly or indirectly.

Paragraph 2. In the event of item II of the chapeau of this article, the act shall be preceded by express authorization of the competent Minister of State, State Secretary, or Municipal Secretary, as the case may be.

## **CHAPTER IX**

### **ACCEPTANCE OF THE OBJECT OF THE CONTRACT**

Article 140. The object of the contract shall be accepted:

I – for works and services:

a) on a temporary basis, by the person responsible for the monitoring and inspection, upon a detailed statement, upon verification of the compliance with the technical requirements;

b) on a definitive basis, by a servant or a commission appointed by the competent authority, upon issuance of a detailed statement evidencing compliance with the contract requirements;

II – for purchases:

a) on a temporary basis, summarily, by the person responsible for monitoring and inspection, upon later verification of compliance of the materials with the contract requirements;

b) on a definitive basis, by a servant or a commission appointed by the competent authority, upon issuance of a detailed statement evidencing compliance with the contract requirements;

Paragraph 1. The object of the contract may be rejected, in whole or in part, when there is no compliance with the contract.

Paragraph 2. The provisional or final acceptance does not exclude the civil responsibility for the stability and safety of the works or services nor the ethical and professional responsibility for the perfect performance of the contract, pursuant to the limits provided by law or under the contract.

Paragraph 3. The terms and methods for the performance of the temporary and final acceptances shall be defined in the rules of procedure or the contract.

Paragraph 4. Except as otherwise provided in the tender documentation or regulation, the trials, tests, and further examinations to verify proper performance of the object of the contract required by official technical standards shall be performed by the contracted party.

Paragraph 5. For a design of the works, final acceptance by the Administration shall not exempt the designer or the consultant of strict liability for all damages caused by faults in the design.

Paragraph 6. For works, the final acceptance by Administration shall not exempt the contracted party, for the minimum period of five (5) years, provided that the warranty term may be extended under the provisions of the tender documentation and in the contract, of any strict liability for the stability and safety of the materials and services performed and by the well-operating conditions of the work, renovation, or improvement to the building, and, in case any faults, defects, or errors are identified, the contracted party shall be responsible for the necessary reparation, correction, reconstruction, or replacement.

## **CHAPTER X**

### **PAYMENTS**

Article 141. For the Administration's duty of payment, the following chronological order shall be observed for each distinguished provider of resources, subdivided into the following categories of contracts:

I – supply of goods;

II – leases;

III – provision of services;

IV – execution of works.

Paragraph 1. The chronological order referred to in the chapeau of this article may be changed, upon prior justification of the competent authority and subsequent communication to the internal control entity of the Administration and to the applicable audit court, exclusively in the following cases:

I – serious disorder, emergency situation, or public calamity;

II – payment to micro-enterprise, small-sized companies, family agriculturalist, individual rural producer, individual micro-entrepreneurs, and cooperatives, provided that the risk of termination of the performance of the object of the contract shall be evidenced;

III – payment for services required for operating structural systems, provided that the risk of termination of the performance of the object of the contract shall be evidenced;

IV - payment of rights arising from contracts in case of bankruptcy, judicial reorganization, or dissolution of the contracted company;

V – payment of the contract, the subject matter of which is essential to ensure the integrity of the public properties or

Paragraph 2. Unmotivated noncompliance with the chronological order referred to in the chapeau of this article shall entail an assessment of the responsibility of the agent in charge, and the control entities shall be responsible for the inspection.

Paragraph 3. The body or entity shall disclose, on a monthly basis, in a specific section reserved for disclosure of information on their website, the chronological order of their payments, as well as the reasons supporting any change to the order.

Article 142. An express provision in the tender documentation or the contract may provide for payment in a blocked account or payment by effective evidence of the triggering event.

Sole paragraph. (VETOED).

Article 143. For disputes arising from the performance of the object, regarding size, quality, and amounts, the undisputable portion shall be cleared within the term set forth for payment.

Article 144. In contracting for works, supplies, and services, including engineering ones, a variable compensation may be set according to the contracted party's performance, based on goals, quality standards, environmental sustainability criteria, and delivery times as defined in the tender documentation and the contract.

Paragraph 1. Payment may be adjusted by a percentage on the amount saved at a certain expense, in cases where the object of the contract aims at implementing a process of rationing, case in which the expenses shall be on the account of the same budget credits, pursuant to specific regulations.

Paragraph 2. The use of variable remuneration shall be justified and shall respect the budget limit fixed by the Administration for the contracting.

Article 145. No advance payment shall be permitted, neither in whole nor in part, for contractual parts related to the supply of goods, the performance of the works, or the provision of services.

Paragraph 1. Early payment shall only be permitted if it promotes reasonable savings in proceeds or if it represents an essential condition to obtain the goods or to provide the service, case in which such early payment shall be justified in the procurement process and expressly provided for in the tender documentation or formal direct award contracting.

Paragraph 2. The Administration may require the provision of an additional warranty as a condition for early payment.

Paragraph 3. In case the object is not completed within the term set forth in the contract, the amount paid early shall be returned.

Article 146. The accounting services, upon payment of the expense, shall communicate to the tax administration entities the characteristics of the expense and the amounts paid, as provided for in article 63 of Law No. 4,320 of March 17, 1964.

## **CHAPTER XI**

### **ANNULMENT OF CONTRACTS**

Article 147. In case of nonconformity evidenced in the procurement process or in the contract performance, if it is not possible to remediate it, the decision on the suspension of the performance or annulment of the contract shall only apply in case of public interest, upon assessment, among others, of the following aspects:

I – economic and financial impacts arising from delay in the enjoyment of benefits of the object of the contract;

II – social and environmental risks and risks to the safety of the local population resulting from delay in the enjoyment of the object of the contract;

III – social and environmental motivation of the contract;

IV – costs related to deterioration or loss of the parts executed;

V – expenses required for preserving the facilities and the services already performed;

VI – expenses arising from retirement and later return to the normal course of activities;

VII – measures effectively adopted by the person responsible for the body or entity for remediation of any nonconformities evidenced;

VIII – total cost and stage of physical and financial performance of the contract, of the agreements, works, or parts involved;

IX – decommission of direct or indirect jobs as a result of interruption;

X – costs resulting from a new procurement process or the execution of a new contract;

XI – economic opportunity loss during the period of interruption.

Sole paragraph. In case the interruption or annulment is not of public interest, the public power shall elect to whether continue the contract or solve the non-conformity through compensation for losses and damages, without prejudice to the assessment of liability and to the imposition of applicable penalties.

Article 148. Declaration of annulment of the administrative contract shall require prior analysis of public interest on that subject, pursuant to article 147 of this Law, and shall operate retroactively, hindering the legal effects that the contract should have on an ordinary basis and dissolving those effects it already has.

Paragraph 1. In case it is not possible to return to the previous factual situation, annulment should be resolved upon compensation for losses and damages, without prejudice to the assessment of the responsibility and imposition of applicable penalties.

Paragraph 2. When declaring annulment of the contract, the authority, aiming at continuing the administrative activity, may decide that it shall only be effective later in the future, enough to execute a new contracting, up to six (6) months, provided that this period may only be extended once.

Article 149. The annulment does not release the Administration from the duty to indemnify the contracted party for what it has performed up to the date on which it is declared or effected, and for other losses duly evidenced, as long as it is not imputable to the Administration, reinforcing the responsibility of those who caused them.

Article 150. No contracting shall be executed without a proper definition of the object thereof and indication of the ordinary budget for payment of the contract parts payable in the period of the execution of the contracting, under penalty of annulment of the act, and reinforcing the responsibility of those who caused them.

## **CHAPTER XII**

### **ALTERNATIVE DISPUTE RESOLUTION**

Article 151. In the contracts governed by this Law, alternative means for dispute resolution and prevention may be used, especially conciliation, mediation, the dispute resolution committee, and arbitration.

Sole paragraph. The provisions in the chapeau of this article shall apply to the disputes related to disposable property rights, such as issues related to restoration of the economic and financial balance of the contract, to the non-performance of contractual obligations by any of the parties, and the calculation of indemnifications.

Article 152. The arbitration shall always be lawful and shall observe the principle of disclosure.

Article 153. The contracts may be amended to allow the adoption of alternative dispute resolution.

Article 154. The process of choosing the arbitrators, the arbitration collegiate boards, and the dispute resolution committees shall observe technical, transparent, and equality criteria.

## **TITLE IV**

### **NONCONFORMITIES**

#### **CHAPTER I**

#### **VIOLATIONS AND ADMINISTRATIVE SANCTIONS**

Article 155. The supplier or the contracted party shall be held liable administratively for the following violations:

I – to cause the partial failure to perform the contract;

II – to cause the partial failure to perform the contract causing great damage to the Administration, to the operation of the public services, or to the collective interest;

III – to cause the total failure to perform the contract;

IV – failure to submit the documents required under the procurement process;

V – failure to maintain the proposal, except as a result of a supervening fact, duly justified;

VI – failure to enter into the contract or failure to submit the documents required for the contracting, when called before expiration of its proposal;

VII – gives rise to a delay in the performance or delivery of the object of the procurement without any good reason;

VIII – to submit a false declaration or documents for the procurement process or to make a false declaration during the procurement process or performance of the contract;

IX – to defraud the procurement process or practice fraudulent acts in the performance of the contract;

X – to behave in a disreputable manner or commit fraud of any kind;

XI – to perform illegal acts aiming at frustrating the objectives of the procurement process;

XII – to perform a harmful act provided for in article 5 of Law No. 12,846 of August 1, 2013.

Article 156. The following sanctions shall be imposed on the person responsible for the administrative violations provided for in this Law:

I – warning;

II – fine;

III – prohibition to the participation in procurement processes and contracts;

IV – declaration of disreputability for procurement processes or contracts.

Paragraph 1. In the imposition of the sanctions, the following shall be taken into account:

I – the type and severity of the violation committed;

II – the singularities of the particular case;

III – the aggravating and mitigating circumstances;

IV – the damage arising therefrom to the Public Administration;

V – the implementation or improvement of an integrity program, pursuant to rules and guidelines of regulatory entities.

Paragraph 2. The sanction provided for in item I of the chapeau of this article shall be imposed exclusively in case of the administrative violation provided for in item I of the chapeau of article 155 of this Law,

Paragraph 3. The sanction provided for in item II of the chapeau of this article, calculated pursuant to the tender documentation or the contract, may not be less than five-tenths percent (0.5%) or more than thirty percent (30%) of the amount of the contract procured or executed with a direct award contracting and shall be imposed on the person responsible for any of the administrative violations provided for in article 155 of this Law.

Paragraph 4. The sanction provided for in item III of the chapeau of this article shall be imposed on the person responsible for the administrative sanctions provided for in items II, III, IV, V, VI, and VII of the chapeau of article 155 of this Law, when the imposition of a more severe penalty is not justified and shall prohibit the person responsible from participating in procurement processes or contracts in the scope of the direct or indirect Public Administration of the federated state that imposed the sanction, for no more than three (3) years.

Paragraph 5. The sanction provided for in item IV of the chapeau of this article shall be imposed on the person responsible for the administrative sanctions provided for in items VIII, IX, X, XI, and XII of the chapeau of article 155 of this Law, as well as for the administrative sanctions provided for in items II, III, IV, V, VI, and VII of the chapeau of such article justifying the imposition of a penalty more severe than the sanction referred to in paragraph 4 of this article, and shall prohibit the person responsible from participating in procurement processes or contracts in the scope of the direct or indirect Public Administration of all federated states, for at least three (3) years and no more than six (6) years.

Paragraph 6. The sanction established in item IV of the chapeau of this article shall be preceded by legal analysis and shall observe the following rules:

I – when it is imposed by a body of the Executive Branch, it shall be in the exclusive jurisdiction of a minister of State, state secretary, or municipal secretary, and when it is imposed by an independent agency or foundation, it shall be in the exclusive jurisdiction of the highest authority of the entity;

II – when it is imposed by entities of the Legislative and Judiciary Branches, by the Prosecution Service, and by the Public Defender's Office carrying out administrative duties, it shall be in the exclusive jurisdiction of an authority with a hierarchical level equivalent to the authorities referred to in item I of this paragraph, pursuant to the applicable regulations.

Paragraph 7. The sanctions provided for in items I, III, and IV of the chapeau of this article may be imposed cumulatively with the sanction provided for in item II of the chapeau of this article.

Paragraph 8. If the fine imposed and the applicable indemnifications are larger than any amounts that may be payable by the Administration to the contracted party, in addition to the loss of such amount, the difference shall be deducted from the guarantee provided or shall be charged judicially.

Paragraph 9. The imposition of the sanctions set forth in the chapeau of this article does not exclude, in any event, the obligation to fully redress the damage caused to the Public Administration.

Article 157. In the imposition of the sanction set forth in item II of the chapeau of article 156 of this Law, the interested party may provide its defense within fifteen (15) business days of the date of summoning.

Article 158. The imposition of the sanctions set forth in items III and IV of the chapeau of article 156 of this Law shall require the initiation of the process of accountability to be carried out by a commission composed of two (2) or more stable civil servants, who will assess known facts and circumstances and summon the supplier or the contracted party to, within fifteen (15) business days of the date of summoning, provide its written defense and specify the evidence it intends to produce.

Paragraph 1. In a body or entity of the Public Administration whose workforce is not composed of statutory civil servants, the commission referred to in the chapeau of this article shall be composed of two (2) or more public employees members of its permanent staff, preferably who have been working in the body or entity for at least three (3) years.

Paragraph 2. In case of granting of a request for production of new evidence or attachment of evidence deemed essential by the commission, the supplier or the contracted party may submit closing arguments within fifteen (15) business days of the date of summoning.

Paragraph 3. Illegal, inapplicable, unnecessary, delaying, or untimely evidence shall be rejected by the commission through a well-grounded decision.

Paragraph 4. The prescription shall occur in five (5) years of notice of the violation by the Administration and shall be:

I – interrupted by the initiation of the process of accountability referred to in the chapeau of this article;

II – suspended by the execution of a leniency agreement provided for in Law No. 12,846 of August 1, 2013;

III – suspended by a court decision that renders the completion of the administrative assessment unfeasible.

Article 159. The acts provided for as administrative violations under this Law or other laws related to Public procurement processes and contracts that are also classified as harmful acts in Law No. 12,846 of August 1, 2013, shall be assessed and evaluated jointly, in the same records, pursuant to the sequence of procedures and the competent authority defined in such Law.

Sole paragraph. (VETOED).

Article 160. The legal personality may be disregarded whenever it is used with abuse of process to facilitate, conceal, or disguise the performance of the illegal acts provided for in this Law or to cause commingling of assets, and, in such case, all effects of the sanctions imposed on the legal entity shall apply to its managers and partners with management powers, the successor legal entity, or the company of the same field with a factual or lawful association or control relationship with the sanctioned party, in all cases observing the adversary proceeding, legal defense, and mandatory prior legal analysis.

Article 161. The agencies and entities of the Executive, Legislative, and Judicial Branches of all federated states shall, within a maximum of fifteen (15) business days of the date of imposition of the sanction, inform data related to the sanctions imposed thereby and keep it updated, for purposes of disclosure in the National Registry of Ineligible and Suspended Companies (Ceis) and in the National Registry of Punished Companies (Cnep), created within the scope of the Federal Government.

Sole paragraph. For purposes of imposition of the sanctions set forth in items I, II, III, and IV of the chapeau of article 156 of this Law, the Executive Branch shall regulate the calculation and the consequences of the sum of several sanctions imposed on the same company and derived from different contracts.

Article 162. Unreasonable delay in performing the contract shall subject the contracted party to a delay penalty, as provided for in the tender documentation or the contract.

Sole paragraph. The imposition of a late-payment penalty shall not prevent the Administration from converting it into a compensatory fine and promoting the unilateral termination of the contract with the accumulated imposition of other sanctions provided for in this Law.

Article 163. The supplier or contracted party may be rehabilitated before the authority that imposed the penalties itself, with the following cumulative requirements:

I – full compensation of the damage caused to the Public Administration;

II – payment of the fine;

III – elapsing of the minimum term of one (1) year of the imposition of the penalty, in case of disqualification to participate in procurement processes and contracts, or three (3) years of the imposition of the penalty, in case of declaration of disreputability;

IV – satisfaction of the rehabilitation conditions defined in the sanction;

V – prior legal analysis, with a final opinion regarding the meeting of the requirements defined in this article.

Sole paragraph. The sanction for the violations provided for in items VIII and XII of the chapeau of article 155 of this Law shall require as a condition for rehabilitation of the supplier or contracted party the implementation or improvement of an integrity program by the person responsible.

## **CHAPTER II**

### **OPPOSITIONS, REQUESTS FOR CLARIFICATION AND APPEALS**

Article 164. Anyone is a legitimate party to oppose a tender documentation for nonconformity in the application of this Law or to request clarification about its terms, and the request shall be filed up to three (3) business days before the date of beginning of the procurement process.

Sole paragraph. The response to the opposition or request for clarification shall be published on an official website within three (3) business days, up to the last business day preceding the date of beginning of the procurement process.

Article 165. The following are possible for Administration acts arising from the enforcement of this Law:

I – appeals, within three (3) business days of the date of summoning or drawing-up of the document, against:

a) an act granting or denying a request for pre-qualification of an interested party or registration in a register of information, its amendment or cancellation;

b) the evaluation of the proposals;

c) the qualification or disqualification of the supplier;

d) the annulment or revocation of the procurement process;

e) the termination of the contract when determined by a unilateral written act of the Administration;

II – requests for reconsideration, within three (3) business days of the date of summoning, regarding an act that is not appealable hierarchically.

Paragraph 1. With respect to appeals filed as provided for in sub-items “b” and “c” of item I of the chapeau of this article, the following provisions shall be observed:

I – the intention to appeal shall be notified immediately, under penalty of estoppel, and the term for submission of the appeal arguments set forth in item I of the chapeau of this article will begin on the date of summoning or drawing-up of the qualification or disqualification document or, in case of adoption of the inversion of stages provided for in paragraph 1 of article 17 of this Law, the evaluation document;

II – the evaluation shall occur in a single stage.

Paragraph 2. The appeal referred to in item I of the chapeau of this article shall be sent to the authority that has issued the act or rendered the appealed decision, and if it does not reconsider the act or the decision within three (3) business days, it shall send the appeal and its justification to the higher authority, which shall render its decision within no more than ten (10) business days of receipt of the records.

Paragraph 3. The receipt of an appeal shall entail invalidation only of the act that may not be performed.

Paragraph 4. The term for submission of counter-arguments shall be the same as for the appeal and shall begin on the date of personal summoning or publication of the filing of the appeal.

Paragraph 5. The suppliers shall be ensured the right to examine the elements indispensable to the protection of their interests.

Article 166. The imposition of the sanctions set forth in items I, II, and III of the chapeau of article 156 of this Law shall be appealable within fifteen (15) business days of the date of summoning.

Sole paragraph. The appeal referred to in the chapeau of this article shall be sent to the authority that has rendered the appealed decision, and if it does not reconsider it within five (5) business days, it shall send the appeal and its justification to the higher authority, which shall render its decision within no more than twenty (20) business days of receipt of the records.

Article 167. For the imposition of the sanction set forth in item IV of the chapeau of article 156 of this Law, it shall only be possible to file a request of reconsideration within fifteen (15) business days of the date of summoning, and it shall be decided within no more than twenty (20) business days of receipt.

Article 168. The appeal and the request for reconsideration shall entail a stay of proceedings for the appealed act or decision until the final decision of the competent authority is rendered.

Sole paragraph. In the preparation of its decisions, the competent authority shall be assisted by the legal assistance body, which shall resolve doubts and provide it with necessary information.

### **CHAPTER III**

#### **CONTROL OF CONTRACTING**

Article 169. The public contracting shall be subject to continuous and permanent risk management and preventive control practices, including through the adoption of information technology resources, and, in addition to being subordinated to social control, they shall be subject to the following lines of defense:

I – the first line of defense, formed by civil servants and public employees, procurement agents, and authorities acting in the governance structure of the body or entity;

II – the second line of defense, formed by the legal assistance and internal control units of the body or entity itself;

III – the third line of defense, formed by the central internal control body of the Administration and by the audit court.

Paragraph 1. Pursuant to the applicable regulations, the implementation of the practices referred to in the chapeau of this article shall be under the responsibility of top management of the body or entity and shall take into account the costs and benefits arising from their implementation, and the measures promoting undamaged and reliable relations, with legal certainty for all parties involved, and producing the most beneficial result for the Administration with efficiency, efficacy, and effectiveness in public contracting shall be chosen.

Paragraph 2. To develop their activities, the regulatory authorities shall have unrestricted access to the documents and information required for carrying out the works, including the documents classified by the body or entity under Law No. 12,527 of November 18, 2011, and the regulatory body that receives any classified information shall become co-responsible for maintaining its secrecy.

Paragraph 3. The members of the lines of defense referred to in items I, II, and III of the chapeau of this article shall observe the following:

I – when they verify a simple formal inadequacy, they shall adopt measures for its remediation and mitigation of risks of a new occurrence, preferably by improving the preventive controls and training the responsible public officials;

II – when they verify a nonconformity that characterizes damage to the Administration, without prejudice to the measures set forth in item I of this paragraph 3, they shall adopt the necessary measures to assess the administrative violations, pursuant to the segregation of duties and the need for individualization of the conducts, and send copies of the applicable documents to the competent Prosecution Service for verification of the illegal acts under their jurisdiction.

Article 170. The regulatory authorities shall adopt, in the inspection of the acts set forth in this Law, criteria related to opportunity, materiality, relevance, and risk, and shall consider the reasons submitted by the responsible agencies and entities and the results obtained with the contracting, pursuant to the provisions in paragraph 3 of article 169 of this Law.

Paragraph 1. The reasons submitted by the responsible agencies and entities shall be sent to the regulatory authorities before completion of the discovery phase of the process and shall not be excluded from the records.

Paragraph 2. Omissions in the provision of information shall neither prevent the resolutions of the regulatory authorities nor delay the application of any of their processing and resolution terms.

Paragraph 3. The regulatory authorities shall disregard documents deemed inapplicable, merely delaying, or of no interest in clarifying the facts.

Paragraph 4. Any supplier, contracted party, or individual or legal entity may file complaints with the internal control entities or the audit court against nonconformities in the application of this Law.

Article 171. In the control inspection, the following shall be observed:

I – feasibility of an opportunity for expression to the managers about possible proposals for referral that will have a significant impact on the work routines of the inspected agencies and entities, so that they provide supporting information for a prior assessment of the cost-benefit ratio of such possible proposals;

II – adoption of objective and impartial procedures and preparation of technically supported reports, based exclusively on evidence obtained and organized according to the auditing standards of the respective regulatory authority, in order to prevent personal interests and biased interpretations from interfering with the submission and treatment of the facts assessed;

III – definition of objectives, in the turnkey, EPC contract, semi-integrated contracting, and integrated contracting, pursuant to technical, legal, budget, and financial requirements, according to the purposes of the contracting, and the conformity of the fixed price based on the market parameters for the contracted object shall also be assessed, also considering the geographic dimension.

Paragraph 1. When it preventively suspends the procurement process, the audit court shall provide a final expression about the merits of the nonconformity that caused the suspension within twenty-five (25) business days of the date of receipt of the information referred to in paragraph 2 of this article, extendable for an equal period once, and it shall objectively define:

I – the causes of the suspension order;

II – how the compliance with the public interest hindered by the suspension of the procurement process will be ensured, in case of essential objects or emergency contracting.

Paragraph 2. When the body or entity is notified of the suspension of the procurement process, it shall, within an extendable term of ten (10) business days:

I – inform the measures adopted to comply with the decision;

II – provide all applicable information;

III – proceed with the assessment of the responsibility, when applicable.

Paragraph 3. The decision examining the merits of the preventive measure referred to in paragraph 1 of this article shall define the necessary and proper measures, in light of the possible alternatives, for remediation of the procurement process, or determine its annulment.

Paragraph 4. Failure to comply with the provisions in paragraph 2 of this article shall entail the assessment of the responsibility and obligation to redress the damage caused to the public treasury.

Article 172. (VETOED).

Article 173. The audit courts shall, through their audit schools, promote capacity-building events for the effective civil servants and public employees appointed to carry out the duties essential to the enforcement of this Law, including classroom and long-distance courses, learning networks, seminars, and congresses about public contracting.

## **TITLE V**

### **GENERAL PROVISIONS**

#### **CHAPTER I**

##### **NATIONAL PUBLIC PROCUREMENT PORTAL (PNCP)**

Article 174. The National Public Procurement Portal (PNCP), an official website, is hereby created and intended for:

I – centralized and mandatory disclosure of the acts required by this Law;

II – optional contracting by agencies and entities of the Executive, Legislative, and Judicial Branches of all federated states.

Paragraph 1. The PNCP shall be managed by the Managing Committee of the Brazilian Public Procurement Network, to be presided over by a representative appointed by the President of the Republic and composed of:

I – three (3) Federal Government representatives appointed by the President of the Republic;

II – two (2) State and Federal District representatives appointed by the National Council of State Secretaries of the Administration;

III – two (2) Municipal representatives appointed by the National Confederation of Municipalities.

Paragraph 2. The PNCP shall include, among others, the following information on contracting:

I – annual contracting plans;

II – electronic catalogs for standardization;

III – public notices for registration and pre-qualification, notices of direct award contracting and tender documentation, and their respective attachments;

IV – tender proposals;

V – contracts and addenda;

VI – electronic invoices, when applicable.

Paragraph 3. The PNCP shall, among other functionalities, offer:

I – a unified information registration system;

II – a panel for consultation of prices, healthcare price database, and access to the Brazilian database of electronic invoices;

III – a system for planning and management of contracting, including the record of certification of fulfillment of obligations set forth in paragraph 4 of article 88 of this Law;

IV – an electronic system to hold public sessions;

V – access to the National Register of Ineligible and Suspended Companies (Ceis) and the National Register of Punished Companies (Cnep);

VI – a system of management, shared with the society, of information related to the execution of the contract, which enables:

a) previously identified interested parties to send, record, store, and disclose text messages or images;

b) the access to the computerized system for monitoring works referred to in item III of the chapeau of article 19 of this Law;

c) the communication between the population and representatives of the Administration and the contracted party designated to provide relevant information and clarification, pursuant to the applicable regulations;

d) the disclosure, pursuant to the applicable regulations, of a final report with information about the achievement of the goals that justified the contracting and any conducts to be adopted to enhance the Administration's activities.

Paragraph 4. The PNCP shall adopt the open data format and shall meet the requirements set forth in Law No. 12,527 of November 18, 2011.

Paragraph 5. (VETOED).

Article 175. Without prejudice to the provisions in article 174 of this Law, the federated states may create an official website to provide more information and execute the corresponding contracting.

Paragraph 1. As long as the integration with the PNCP is maintained, the contracting may be executed through an electronic system provided by a legal entity of private law, pursuant to the applicable regulations.

Paragraph 2. (VETOED).

Article 176. The Municipalities with up to twenty thousand (20,000) inhabitants shall have six (6) years of the date of publication of this Law to:

I – meet the requirements established in article 7 and in the chapeau of article 8 of this Law;

II – carry out the procurement process electronically, as referred to in paragraph 2 of article 17 of this Law;

III – comply with the rules related to publication on an official website.

Sole paragraph. While the PNCP is not adopted, the Municipalities referred to in the chapeau of this article shall:

I – publish, on the official gazette, the information that, according to this Law, shall be published on an official website, and the publication of summaries is accepted;

II – make physical copies of the documents available in their offices, without charging any amounts therefor, except for the amount related to the provision of the tender documentation or copies of documents, which shall not be higher than the cost of their graphic reproduction.

## **CHAPTER II**

### **AMENDMENTS TO LAWS AND REGULATIONS**

Article 177. The chapeau of article 1,048 of Law No. 13,105 of May 16, 2015 (Brazilian Code of Civil Procedure) becomes effective with the addition of item IV below:

“Article 1,048.

IV – which discusses the application of the provisions of the general procurement and contracting rules referred to in item XXVII of the chapeau of article 22 of the Brazilian Federal Constitution.

(New wording)

Article 178. Title XI of the Special Part of Decree-Law No. 2,848 of December 7, 1940 (Brazilian Penal Code), becomes effective added by the following Chapter II-B:

#### **“CHAPTER II-B**

#### **PROCUREMENT PROCESS AND ADMINISTRATIVE CONTRACT CRIMES**

##### **Illegal direct award contracting**

Article 337-E. To accept, enable, or cause the direct award contracting in cases other than as provided by law:

Penalty – confinement for four (4) to eight (8) years, and fine.

##### **Interference with the competitive nature of a procurement process**

Article 337-F. To interfere with or defraud the competitive nature of the procurement process to obtain for oneself or someone else an advantage arising from the award of the object under a procurement process:

Penalty – confinement for four (4) to eight (8) years, and fine.

**Promotion of an undue contracting**

Article 337-G. To directly or indirectly promote a private interest before the Public Administration, causing the initiation of a procurement process or the execution of a contract that is invalidated in the future by decree of the Judiciary Branch:

Penalty – confinement for six (6) months to three (3) years, and fine.

**Illicit modification of or payment under an administrative contract**

Article 337-H. To accept, enable, or give rise to any modification or advantage, including contract extension, to the benefit of the contracted party, during the execution of the contracts entered into with the Public Administration, without authorization by law, in the tender documentation or in the respective contracts or, also, pay an invoice in disregard of the chronological order of payment:

Penalty – confinement for four (4) to eight (8) years, and fine.

Interference with a procurement process

Article 337-I. To preclude, interfere with, or defraud any act of a procurement process:

Penalty – detention for six (6) months to three (3) years, and fine.

**Breach of confidentiality in a procurement process**

Article 337-J. To disclose a proposal submitted in a procurement process or to provide a third party with the opportunity to do so:

Penalty – detention for two (2) to three (3) years, and fine.

**Driving a supplier out**

Article 337-K. To drive out or attempt to drive out a supplier, by using violence, serious threat, fraud, or offering an advantage of any kind:

Penalty – confinement for three (3) to five (5) years, and fine, in addition to relevant penalty for violence.

Sole paragraph. Anyone who refrains from or gives up on procuring is also subject to the same penalty, due to the advantage offered.

**Fraud in a procurement process or contract**

Article 337-L. To defraud, to the prejudice of the Public Administration, a procurement process or contract resulting thereof by means of:

I – delivery of goods or provision of services with quality or in quantities other than as provided in the tender documentation or the agreements;

II – supply, as genuine or perfect, counterfeit, deteriorated, unfit for consumption, or expired goods;

III – delivering a piece of merchandise instead of another;

IV – changing the substance, quality, or quantity of the goods supplied or services provided;

V – any fraudulent means that make the proposal or execution of the contract unjustly more expensive to the Public Administration:

Penalty – confinement for four (4) to eight (8) years, and fine.

### **Disreputable contracting**

Article 337-M. To accept in the procurement process a company or professional deemed disreputable:

Penalty – confinement for one (1) to three (3) years, and fine.

Paragraph 1. To contract with a disreputable company or professional:

Penalty – confinement for three (3) to six (6) years and fine.

Paragraph 2. Anyone who, having been deemed disreputable, participates in the procurement process is subject to the same penalty of the chapeau of this article and anyone who, having been deemed disreputable, enters into contracts with the Public Administration is subject to the same penalty of paragraph 1 of this article.

### **Improper obstacle**

Article 337-N. To unfairly preclude, prevent, or hinder the inclusion of any person interested in the registers of information or to unduly promote any change, suspension, or cancellation of a supplier's record:

Penalty – confinement for six (6) months to two (2) years, and fine.

### **Serious omission of data or information by a designer**

Article 337-O. To omit, modify, or submit to the Public Administration a registration survey or boundary condition in relevant discrepancy with reality, interfering with the competitive nature of the procurement process, or to the prejudice of selecting the most beneficial proposal for the Public Administration, in a contracting for the drafting of a basic engineering design, detailed engineering design, or preliminary design, in a competitive dialogue or procedure for expression of interest:

Penalty – confinement for six (6) months to three (3) years, and fine.

Paragraph 1. Boundary conditions are the information and surveys sufficient and necessary for the definition of the design solution and the corresponding prices by the supplier, including drillings, topography, studies of demand, environmental conditions, and other impactful environmental elements, deemed minimum or mandatory requirements in technical standards that guide the preparation of designs.

Paragraph 2. If the crime is committed to obtain a direct or indirect benefit to oneself or to others, the penalty provided for in the chapeau of this article shall be doubled.

Article 337-P. The penalty imposed for the crimes provided for in this Chapter shall follow the calculation methodology provided for in this Code and shall not be lower than two percent (2%) of the amount of the contract procured or executed by means of direct award contracting.”

Article 179. Items II and III of the chapeau of article 2 of Law No. 8,987 of February 13, 1995 now read as follows:

“Article 2.

II – concession of public services: the delegation by the granting authority of the provision of public services, through procurement, as a competitive procurement or competitive dialogue, to a legal entity or consortium of companies that demonstrate the ability to perform, at its own account and risk and for a definite term;

III – concession of public services preceded by the execution of public works: the full or partial construction, conservation, renovation, expansion, or improvement of any works of public interest, delegated by the granting authority, through procurement, as a competitive procurement or competitive dialogue, to a legal entity or consortium of companies that demonstrate the ability to perform, at its own account and risk, so that the investment of the concessionaire is compensated and amortized through the exploitation of the service or works for a definite term;

(New wording)

Article 180. The chapeau of article 10 of Law No. 11,079 of December 30, 2004, now reads as follows:

“Article 10. The contracting of public and private partnerships shall be preceded by a procurement process, as a competitive procurement or competitive dialogue, being the beginning of any procurement process conditioned to: (New wording)

### **CHAPTER III**

#### **TRANSITIONAL AND FINAL PROVISIONS**

Article 181. The federated states shall create purchase centers to make large purchases and meet the needs of several agencies and entities under their jurisdiction and achieve the purposes of this Law.

Sole paragraph. For Municipalities with up to ten thousand (10,000) inhabitants, public consortiums shall be preferably created for the execution of the activities set forth in the chapeau of this article, as provided by Law No. 11,107 of April 6, 2005.

Article 182. The Federal Government shall update, on every January 1<sup>st</sup>, through the Special Extended National Consumer Price Index (IPCA-E) or an index that may replace it, the amounts fixed by this Law, which shall be published on the PNCP.

Article 183. The terms set forth in this Law shall be counted excluding the start date and including the due date, and shall observe the following provisions:

I – the terms expressed in calendar days shall be continuously calculated;

II – the terms expressed in months or years shall be calculated from date to date;

III – for the terms expressed in business days, only the days in which the competent agency or body is open to the public to provide administrative services shall be taken into account.

Paragraph 1. Except as otherwise provided, the first day of the term is deemed to be:

I – the first business day following the availability of the information on the Internet;

II – the date on which the delivery confirmation is attached to the records when the notice is made by mail.

Paragraph 2. The term is deemed to be extended up to the first following business day if the due date falls on a day on which the business is required or permitted to close if the working hours end before the ordinary time, or in case of unavailability of the electronic communications.

Paragraph 3. In the event of item II of the chapeau of this article, if, in the month in which the due date occurs, there is no day equivalent to that of the beginning of the term, the last day of the month shall be deemed the due date.

Article 184. The provisions of this Law apply, as appropriate and in the absence of a specific rule, to partnerships, agreements, arrangements, and other similar instruments entered into by the agencies and entities of the Public Administration, as provided for in applicable regulations of the Federal Government.

Article 185. The provisions of Chapter II-B of Title XI of the Special Part of Decree-Law No. 2,848 of December 7, 1940 (Brazilian Penal Code) apply to the procurement processes and contracts governed by Law No. 13,303 of June 30, 2016.

Article 186. The provisions of this Law subsidiarily complement Law No. 8,987 of February 13, 1995, Law No. 11,079 of December 30, 2004, and Law No. 12,232 of April 29, 2010.

Article 187. The States, the Federal District and the Municipalities may apply the regulations issued by the Federal Government to execute this Law.

Article 188. (VETOED).

Article 189. This Law applies to the events set forth in the laws and regulations that expressly refer to Law No. 8,666 of June 12, 1993, Law No. 10,520 of July 17, 2002, and articles 1 to 47-A of Law No. 12,462 of August 4, 2011.

Article 190. Contracts signed before the enactment of this Law shall continue to be governed pursuant to the rules provided for in the revoked legislation.

Article 191. Before the end of the term referred to in item II of the chapeau of article 193, the Administration may choose to hold a procurement process or to contract directly pursuant to this Law or the laws referred to in such item, and the option chosen shall be expressly indicated in the tender documentation or the notice or instrument of direct award contracting; the combined application of this Law with the laws referred to in such item is prohibited.

Sole paragraph. In the event of the chapeau of this article, if the Administration chooses to hold a procurement process pursuant to the laws referred to in item II of the chapeau of article 193 of this Law, the respective contract shall be governed by the rules provided therein during its effectiveness.

Article 192. Contracts related to properties owned by the Federal Government or one of its independent agencies and foundations shall continue to be governed by the applicable laws and regulations, and this Law shall apply on a subsidiary basis.

Article 193. The following are hereby revoked:

I – articles 89 to 108 of Law No. 8,666 of June 21, 1993, on the date of publication of this Law;

II – Law No. 8,666 of June 21, 1993, Law No. 10,520 of July 17, 2002, and articles 1 to 47-A of Law No. 12,462 of August 4, 2011, after two (2) years of the official publication of this Law.

Article 194. This Law becomes effective on the date of its publication.

Brasília, April 1, 2021; 200 years after the Independence and 133 years after the Republic.

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