**AUTOMATED TRANSLATION**

**OFFICIAL DIARY OF THE UNION**

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**Body: Acts of the Legislative Power**

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

Administrative Contracts and Bidding Law.

**THE PRESIDENT OF THE REPUBLIC**

I make it known that the National Congress enacts and I enact the following Law:

TITLE I

PRELIMINARY PROVISIONS

CHAPTER I

THE SCOPE OF APPLICATION OF THIS LAW

Art. 1 This Law establishes general rules for bidding and contracting for the direct, autarchic and foundational Public Administrations of the Union, States, Federal District and Municipalities, and covers:

I - the bodies of the Legislative and Judiciary Powers of the Union, the States and the Federal District and the bodies of the Legislative Power of the Municipalities, when performing an administrative function;

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

§ 1 Public companies, government-controlled companies and their subsidiaries, governed by Law No. 13.303, of June 30, 2016, are not covered by this Law, except for the provisions of art. 178 of this Law.

§ 2 The hiring carried out within the scope of public offices headquartered abroad will comply with local peculiarities and the basic principles established in this Law, in the form of specific regulations to be issued by the Minister of State.

§ 3 In bids and contracts involving resources from a loan or donation from an official foreign cooperation agency or financial organization of which Brazil is a party, the following may be accepted:

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

II - conditions peculiar to the selection and contracting contained in the rules and procedures of agencies or bodies, provided that:

a) are required to obtain the loan or donation;

b) do not conflict with the constitutional principles in force;

c) are indicated in the respective loan or donation contract and have been subject to a favorable opinion from the legal body of the financing contracting party prior to the execution of said contract;

d) (VETOED).

§ 4 The documentation sent to the Federal Senate for authorization of the loan referred to in § 3 of this article must refer to the contractual conditions that apply in the case of the aforementioned paragraph.

§ 5 Contracts relating to the direct and indirect management of the country's international reserves, including services related to or ancillary to this activity, shall be regulated in a specific regulatory act of the Central Bank of Brazil, ensuring compliance with the principles established in the **caput** of the art. 37 of the Federal Constitution.

Art. 2This Law applies to:

I - alienation and granting of the real right to use assets;

II - purchase, including by order;

III - lease;

IV - concession and permission for the use of public assets;

V - provision of services, including specialized technical-professionals;

VI - architectural and engineering works and services;

VII - information and communication technology contracts.

Art. 3 The following are not subject to the regime of this Law:

I - contracts whose object is credit operation, internal or external, and public debt management, including the contracting of a financial agent and the granting of guarantees related to these contracts;

II - contracts subject to rules provided for in specific legislation.

Art. 4 The provisions of arts. 42 to 49 of Complementary Law No. 123, of December 14, 2006.

§ 1 The provisions referred to in the caput of this article are not applied:

I - in the case of bidding for the acquisition of goods or contracting of services in general, to the item whose estimated value is greater than the maximum gross revenue admitted for the purpose of qualifying as a small business;

II - in the case of contracting engineering works and services, to bids whose estimated value exceeds the maximum gross revenue admitted for the purpose of qualifying as a small business.

§ 2 Obtaining the benefits referred to in the caput of this article is limited to micro and small businesses that, in the calendar year of the bidding, have not yet entered into contracts with the Public Administration whose sums exceed the maximum gross revenue admitted for the purpose of qualifying as a small business, and the body or entity must demand from the bidder a declaration of compliance with this limit in the bidding process.

§ 3 In contracts with a term of more than 1 (one) year, the annual value of the contract will be considered in the application of the limits provided for in §§ 1 and 2 of this article.

CHAPTER II

OF THE PRINCIPLES

Article 5. In the application of this Law, the principles of legality, impersonality, morality, publicity, efficiency, public interest, administrative probity, equality, planning, transparency, effectiveness, segregation of functions, motivation, binding to the notice, objective judgment, legal certainty, reasonableness, competitiveness, proportionality, speed, economy and sustainable national development, as well as the provisions of Decree-Law No. 4.657, of September 4, 1942 (Law of Introduction to the Rules of Brazilian Law).

CHAPTER III

DEFINITIONS

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

I - body: unit of action that is part of the structure of Public Administration;

II - entity: activity unit endowed with legal personality;

III - Public Administration: direct and indirect administration of the Union, States, Federal District and Municipalities, including entities with legal personality under private law under the control of the government and the foundations established or maintained by it;

IV - Administration: body or entity through which the Public Administration acts;

V - public agent: an individual who, by virtue of election, appointment, designation, hiring or any other form of investiture or relationship, holds a mandate, position, employment or function in a legal entity that is part of the Public Administration;

VI - authority: public agent endowed with decision-making power;

VII - contractor: legal entity that is part of the Public Administration responsible for the contracting;

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

IX - bidder: individual or legal entity, or consortium of legal entities, that participates or expresses the intention to participate in the bidding process, being equal, for the purposes of this Law, the supplier or service provider who, in compliance with the request from the Administration, offers a proposal;

X - purchase: remunerated acquisition of goods to be supplied at once or in installments, with a delivery period of up to 30 (thirty) days from the supply order being considered immediate;

XI - service: activity or set of activities designed to obtain a certain intellectual or material utility of interest to the Administration;

XII - work: any activity established, by force of law, as exclusive to the professions of architect and engineer that implies intervention in the environment through a harmonic set of actions that, together, form a whole that innovates the physical space of nature or entails substantial alteration of the original characteristics of the immovable property;

XIII - common goods and services: those whose performance and quality standards can be objectively defined by the notice, through usual market specifications;

XIV - special goods and services: those that, due to their high heterogeneity or complexity, cannot be described in the form of item XIII of the **caput of** this article, requiring prior justification from the contracting party;

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

XVI - continuous services with exclusive labor dedication regime: those whose contractual performance model requires, among other requirements, that:

a) the contractor's employees are available at the contractor's premises to provide the services;

b) the contracted party does not share the human and material resources available from a contract for the simultaneous execution of other contracts;

c) the contracted party makes it possible for the contracting party to inspect the distribution, control and supervision of the human resources allocated to its contracts;

XVII - non-continuous services or services contracted by scope: those that impose on the contracted party the duty to provide a specific service in a predetermined period, which may be extended, if justifiably, for the period necessary to complete the object;

XVIII - specialized technical services of a predominantly intellectual nature: those performed in works related to:

a) technical studies, planning, basic projects and executive projects;

b) opinions, expertise and evaluations in general;

c) technical advice and consultancy and financial and tax audits;

d) inspection, supervision and management of works and services;

e) sponsorship or defense of judicial and administrative cases;

f) training and improvement of personnel;

g) restoration of works of art and goods of historical value;

h) quality and technological controls, analyses, field and laboratory tests and tests, instrumentation and monitoring of specific parameters of works and the environment and other engineering services that fall within the definition of this item;

XIX - notorious specialization: quality of professional or company whose concept, in the field of its specialty, arising from previous performance, studies, experience, publications, organization, rigging, technical team or other requirements related to its activities, allows us to infer that its work is essential and admittedly adequate to the full satisfaction of the object of the contract;

XX - preliminary technical study: constitutive document of the first stage of planning a contract that characterizes the public interest involved and its best solution and provides the basis for the preliminary project, the term of reference or the basic project to be prepared if it is concluded for the viability of the hiring;

XXI - engineering service: any activity or set of activities intended to obtain a certain usefulness, intellectual or material, of interest to the Administration and which, not framed in the concept of work referred to in item XII of the **caput of** this article, are established , by force of law, as exclusive to the professions of architect and engineer or specialized technicians, which comprise:

a) common engineering service: any engineering service whose object is actions, objectively standardized in terms of performance and quality, maintenance, adequacy and adaptation of movable and immovable assets, while preserving the original characteristics of the assets;

b) special engineering service: one that, due to its high heterogeneity or complexity, cannot fit the definition contained in subparagraph "a" of this item;

XXII - major works, services and supplies: those whose estimated value exceeds R$ 200,000,000.00 (two hundred million reais);

XXIII - term of reference: document necessary for the contracting of goods and services, which must contain the following parameters and descriptive elements:

a) definition of the object, including its nature, the quantities, the term of the contract and, if applicable, the possibility of its extension;

b) reasoning for the contract, which consists of a reference to the corresponding preliminary technical studies or, when it is not possible to disclose these studies, in the extract of the parties that do not contain confidential information;

c) description of the solution as a whole, considering the entire life cycle of the object;

d) contracting requirements;

e) object execution model, which consists of defining how the contract should produce the intended results from its inception to its closure;

f) contract management model, which describes how the execution of the object will be monitored and inspected by the body or entity;

g) measurement and payment criteria;

h) form and criteria for selecting the supplier;

i) estimates of the value of the contract, accompanied by the reference unit prices, calculation logs and supporting documents, with the parameters used to obtain the prices and for the respective calculations, which must be included in a separate and classified document;

j) budget adequacy;

XXIV - preliminary project: technical piece with all the necessary subsidies for the preparation of the basic project, which must contain at least the following elements:

a) demonstration and justification of the needs program, demand assessment of the target audience, technical-economic-social motivation of the enterprise, global vision of investments and definitions related to the desired level of service;

b) conditions of solidity, safety and durability;

c) delivery time;

d) aesthetics of the architectural design, geometric layout and/or design of the area of ​​influence, when applicable;

e) parameters of adequacy to the public interest, economy of use, ease of execution, environmental impact and accessibility;

f) proposal for the design of the work or engineering service;

g) previous projects or preliminary studies that supported the proposed design;

h) topographic and cadastral survey;

i) survey opinions;

j) descriptive memorial of the building elements, construction components and construction materials, in order to establish minimum standards for contracting;

XXV - basic project: set of necessary and sufficient elements, with an adequate level of precision to define and dimension the work or service, or the complex of works or services object of the bidding, prepared based on the indications of the preliminary technical studies, which ensure the technical feasibility and adequate treatment of the project's environmental impact and allow for the evaluation of the cost of the work and the definition of the methods and execution period, and must contain the following elements:

a) topographic and cadastral surveys, surveys and geotechnical tests, laboratory tests and analyses, social and environmental studies and other data and surveys necessary to implement the chosen solution;

b) global and localized technical solutions, sufficiently detailed, in order to avoid, when preparing the executive project and carrying out the works and assembly, the need for reformulations or variations in terms of quality, price and term initially defined;

c) identification of the types of services to be performed and the materials and equipment to be incorporated into the work, as well as their specifications, in order to ensure the best results for the project and executive safety in the use of the object, for the purposes for which destines, considering the identifiable risks and dangers, without frustrating the competitive nature of its execution;

d) information that enables the study and definition of construction methods, temporary installations and organizational conditions for the work, without frustrating the competitive nature of its execution;

e) subsidies for setting up the bidding and management plan for the work, including its schedule, procurement strategy, inspection rules and other necessary data in each case;

f) detailed budget of the overall cost of the work, based on the quantity of services and supplies properly evaluated, mandatory exclusively for the execution regimes provided for in items I, II, III, IV and VII of the **main section** of art. 46 of this Law;

XXVI - executive project: set of elements necessary and sufficient for the complete execution of the work, with the details of the solutions provided for in the basic project, the identification of services, materials and equipment to be incorporated into the work, as well as their technical specifications, of in accordance with relevant technical standards;

XXVII - risk matrix: contractual clause defining risks and responsibilities between the parties and characterizing the initial economic and financial balance of the contract, in terms of financial burden arising from events supervening the contracting, containing at least the following information:

a) list of possible events supervening the signing of the contract that may impact its economic and financial balance and forecast of any need to issue an amendment on the occasion of its occurrence;

b) in the case of result obligations, establishment of the object fractions in relation to which the contractors will be free to innovate in methodological or technological solutions, in terms of modifying the solutions previously outlined in the draft or in the basic project;

c) in the case of halfway obligations, precise establishment of the fractions of the object with respect to which there will be no freedom for the contractors to innovate in methodological or technological solutions, and there must be an obligation of adherence between the execution and the predefined solution in the draft or in the basic project , considering the characteristics of the execution regime in the case of engineering works and services;

XXVIII - unit price contract: contracting the execution of the work or service for a fixed price of certain units;

XXIX - global price contract: contracting the execution of the work or service for a fixed and total price;

XXX - full contract: contracting of a project in its entirety, including all the steps of works, services and necessary facilities, under the sole responsibility of the contractor until its delivery to the contractor in conditions of entry into operation, with characteristics suitable for the purposes for which the technical and legal requirements for its use with structural and operational safety were hired and complied with;

XXXI - contracting by task: labor contracting regime for small jobs for a fixed price, with or without supply of materials;

XXXII - integrated contracting: contracting regime for engineering works and services in which the contracted party is responsible for preparing and developing the basic and executive projects, executing engineering works and services, providing goods or providing special services and carrying out assembly, testing, pre -operation and other necessary and sufficient operations for the final delivery of the object;

XXXIII - semi-integrated contracting: contracting regime for engineering works and services in which the contracted party is responsible for preparing and developing the executive project, executing engineering works and services, providing goods or providing special services and carrying out assembly, testing, pre -operation and other necessary and sufficient operations for the final delivery of the object;

XXXIV - supply and provision of associated service: contracting regime in which, in addition to supplying the object, the contractor is responsible for its operation, maintenance or both, for a specified period of time;

XXXV - international bidding: bidding processed in national territory in which the participation of foreign bidders is admitted, with the possibility of price quotation in foreign currency, or bidding in which the contractual object can or should be performed in whole or in part in the territory foreign;

XXXVI - national service: service provided in national territory, under the conditions established by the federal Executive Branch;

XXXVII - domestic manufactured product: manufactured product produced in the national territory in accordance with the basic production process or with the rules of origin established by the federal Executive Branch;

XXXVIII - competition: bidding modality for contracting special goods and services and common and special engineering works and services, whose judgment criteria may be:

a) lowest price;

b) better technique or artistic content;

c) technique and price;

d) greater economic return;

e) greater discount;

XXXIX - competition: type of bidding for the choice of technical, scientific or artistic work, whose judging criterion will be that of the best technique or artistic content, and for granting a prize or remuneration to the winner;

XL - auction: bidding modality for the sale of immovable property or movable property that is unserviceable or legally seized to the highest bidder;

XLI - auction: mandatory bidding modality for the acquisition of common goods and services, whose judgment criterion may be the lowest price or the highest discount;

XLII - competitive dialogue: bidding modality for contracting works, services and purchases in which the Public Administration conducts dialogues with bidders previously selected according to objective criteria, in order to develop one or more alternatives capable of meeting their needs, and the bidders must submit a final proposal after the end of the dialogues;

XLIII - accreditation: administrative process of public call in which the Public Administration summons interested parties to provide services or goods so that, once the necessary requirements are met, they can be accredited by the body or entity to perform the object when summoned;

XLIV - pre-qualification: selection procedure prior to the bidding, convened by means of a notice, aimed at analyzing the qualification conditions, in whole or in part, of the interested parties or the object;

XLV - price registration system: a set of procedures for carrying out, through direct contracting or bidding in the auction or competition modalities, formal registration of prices related to the provision of services, works and the acquisition and leasing of goods for future contracts;

XLVI - price registration minutes: binding and obligatory document, with the characteristic of a commitment for future contracting, in which the object, prices, suppliers, participating bodies and the conditions to be practiced are registered, according to the provisions contained in the notice of the bidding, in the notice or instrument of direct contracting and in the proposals presented;

XLVII - managing body or entity: Public Administration body or entity responsible for conducting the set of procedures for price registration and for managing the resulting price registration minutes;

XLVIII - participating body or entity: Public Administration body or entity that participates in the initial contracting procedures for price registration and integrates the price registration minutes;

XLIX - non-participating agency or entity: Public Administration agency or entity that does not participate in the initial bidding procedures for price registration and does not integrate the price registration minutes;

L - contracting commission: group of public agents appointed by the Administration, on a permanent or special basis, with the function of receiving, examining and judging documents related to bidding and auxiliary procedures;

LI - electronic catalog for the standardization of purchases, services and works: computerized system, centrally managed and with indication of prices, intended to allow the standardization of items to be purchased by the Public Administration and which will be available for bidding;

LII - official website: internet site, digitally certified by a certifying authority, in which the federative entity centrally discloses the information and digital government services of its bodies and entities;

LIII - efficiency contract: contract whose object is the provision of services, which may include the execution of works and the supply of goods, with the objective of providing savings to the contracting party, in the form of reduction of current expenses, remunerated by the contractor on the basis of as a percentage of the savings generated;

LIV - guarantee insurance: insurance that guarantees the faithful fulfillment of the obligations assumed by the contracted party;

LV - products for research and development: goods, inputs, services and works necessary for scientific and technological research activity, technology development or technological innovation, broken down in a research project;

LVI - surcharge: price budgeted for bidding or contracted at an amount significantly higher than the market reference prices, whether of only 1 (one) item, if the bidding or contracting is for unit service prices, or the overall value of the object, if the bidding or contracting is by task, contracted for a global price or integral, semi-integrated or integrated contract;

LVII - overinvoicing: damage to the Administration's assets, characterized, among other situations, by:

a) measurement of quantities greater than those actually performed or supplied;

b) deficiency in the execution of engineering works and services that result in a decrease in their quality, useful life or safety;

c) changes in the budget for works and engineering services that cause an economic and financial imbalance in the contract in favor of the contractor;

d) other changes to financial clauses that generate anticipated contractual receipts, distortion of the physical and financial schedule, unjustified extension of the contractual term with additional costs for the Administration or irregular price adjustment;

LVIII - readjustment in the strict sense: form of maintenance of the economic-financial balance of the contract consisting in the application of the inflation adjustment index provided for in the contract, which must reflect the effective variation in the cost of production, with the adoption of specific or sectorial indices permitted;

LIX - renegotiation: form of maintenance of the economic and financial balance of the contract used for continuous services with a regime of exclusive dedication of labor or predominance of labor, through the analysis of the variation of contractual costs, which must be provided for in the notice with date linked to the submission of proposals, for costs arising from the market, and with a date linked to the agreement, collective agreement or collective bargaining to which the budget is linked, for costs arising from labor;

LX - contracting agent: person designated by the competent authority, among permanent civil servants or public employees of the permanent staff of the Public Administration, to make decisions, monitor the bidding process, promote the bidding process and perform any other activities necessary for the smooth running of the until the approval.

CHAPTER IV

PUBLIC AGENTS

Art. 7 It shall be incumbent upon the highest authority of the body or entity, or whom the rules of administrative organization indicate, to promote management by competences and to designate public agents to carry out the essential functions for the execution of this Law who meet the following requirements:

I - are, preferably, permanent servants or public employees of the permanent staff of the Public Administration;

II - have attributions related to bids and contracts or have compatible training or qualifications attested by professional certification issued by a government school created and maintained by the government; and

III - they are not the spouse or partner of bidders or regular contractors of the Administration, nor do they have a family relationship, collateral or affinity, up to the third degree, or of a technical, commercial, economic, financial, labor and civil nature.

§ 1 The authority referred to in the **caput of** this article shall observe the principle of segregation of functions, the appointment of the same public agent for simultaneous performance in functions more susceptible to risks is prohibited, in order to reduce the possibility of concealing errors and the occurrence of fraud in the respective contract.

§ 2 The provisions in the **caput** and in § 1 of this article, including the established requirements, also apply to the Management's legal advisory and internal control bodies.

Art. 8 The bidding will be conducted by a hiring agent, a person designated by the competent authority, among permanent civil servants or public employees of the permanent staff of the Public Administration, to take decisions, monitor the bidding process, promote the bidding process and execute any other activities necessary for the smooth running of the event until approval.

§ 1 The hiring agent will be assisted by a support team and will be individually responsible for the acts he/she performs, except when induced in error by the team's performance.

§ 2 In bidding involving special goods or services, provided that the requirements established in art. 7 of this Law, the hiring agent may be replaced by a hiring committee formed by at least 3 (three) members, who will be jointly and severally liable for all acts performed by the committee, except for the member expressing a divergent individual position based on and registered in minutes drawn up at the meeting in which the decision was taken.

§ 3 The rules relating to the performance of the hiring agent and the support team, the functioning of the hiring committee and the performance of inspectors and contract managers referred to in this Law shall be established in a regulation, and the possibility of them shall be provided for count on the support of legal advisory and internal control bodies for the performance of essential functions for the execution of the provisions of this Law.

§ 4 In bidding involving special goods or services whose object is not routinely contracted by the Administration, a company or specialized professional service may be contracted for a specified period to advise the public agents responsible for conducting the bidding process.

§ 5 In bidding in the auction modality, the agent responsible for conducting the event will be designated auctioneer.

Art. 9. The public agent designated to act in the area of ​​bids and contracts, except in the cases provided for by law, is prohibited from:

I - admit, predict, include or tolerate, in the acts that you practice, situations that:

a) compromise, restrict or frustrate the competitive nature of the bidding process, including in cases of participation of cooperative societies;

b) establish preferences or distinctions based on the place of birth, headquarters or domicile of the bidders;

c) are irrelevant or irrelevant to the specific object of the contract;

II - establish differentiated treatment of a commercial, legal, labor, social security or any other nature between Brazilian and foreign companies, including with regard to currency, method and place of payment, even when financing from an international agency is involved;

III - to oppose unjustified resistance to the progress of the processes and, unduly, delay or fail to practice an official act, or practice it against express provision by law.

§ 1 It may not participate, directly or indirectly, in the bidding or execution of the public agent contract of a bidding or contracting agency or entity, and situations that may constitute a conflict of interest in the exercise or after the exercise of the position or employment must be observed in the terms of the legislation that governs the matter.

§ 2 The prohibitions referred to in this article extend to a third party who assists in conducting the contract as a member of a support team, specialized professional or employee or representative of a company that provides technical assistance.

Art. 10. If the competent authorities and public servants who have participated in the procedures related to the bids and contracts dealt with in this Law need to defend themselves in the administrative, controlling or judicial spheres due to an act practiced in strict compliance with constant guidance in a legal opinion prepared pursuant to § 1 of art. 53 of this Law, the public attorney will promote, at the discretion of the public agent, its judicial or extrajudicial representation.

§ 1 The provisions of the **caput of** this article do not apply when:

I - (VETOED);

II - evidence of the practice of intentional unlawful acts appear in the records of the administrative or judicial proceedings.

§ 2 The provisions of the **caput of** this article apply even in the event that the public agent no longer holds the position, job or function in which the questioned act was performed.

TITLE II

BIDDING

CHAPTER I

BIDDING PROCESS

Art. 11.The bidding process aims to:

I - ensure the selection of the proposal capable of generating the most advantageous contracting result for the Public Administration, including with regard to the object's life cycle;

II - ensure equal treatment between bidders, as well as fair competition;

III - avoid overpriced contracts or with clearly unfeasible prices and overpricing in the execution of contracts;

IV - encourage innovation and sustainable national development.

Single paragraph. The senior management of the body or entity is responsible for the governance of contracts and must implement processes and structures, including risk management and internal controls, to assess, direct and monitor the bidding processes and the respective contracts, in order to achieve the objectives established in the **main section of** this article, promote an honest and trustworthy environment, ensure the alignment of contracts with strategic planning and budget laws, and promote efficiency, effectiveness and effectiveness in their contracts.

Art. 12. In the bidding process, the following shall be observed:

I - the documents will be produced in writing, with the date and place of their completion and signature of those responsible;

II - the values, prices and costs used will have the national currency as monetary expression, except for the provisions of art. 52 of this Law;

III - failure to comply with merely formal requirements that do not compromise the assessment of the qualification of the bidder or the understanding of the content of its proposal will not result in its removal from the bid or the invalidation of the process;

IV - proof of authenticity of a copy of a public or private document may be made before an agent of the Administration, upon presentation of an original or declaration of authenticity by a lawyer, under his/her personal responsibility;

V - notarization of signature will only be required when there is doubt of authenticity, unless otherwise required by law;

VI - the acts will preferably be digital, in order to allow them to be produced, communicated, stored and validated by electronic means;

VII - based on documents formalizing the demands, the bodies responsible for planning each federative entity may, in the form of a regulation, prepare an annual contracting plan, with the objective of rationalizing the contracting of bodies and entities under its competence, guaranteeing the alignment with its strategic planning and subsidize the elaboration of the respective budget laws.

§ 1 The annual contracting plan referred to in item VII of the **caput of** this article must be disclosed and kept available to the public on an official website and will be observed by the federative entity in carrying out bids and in the execution of contracts.

§ 2 The identification and digital signature by an individual or legal entity in electronic means is allowed, through a digital certificate issued within the scope of the Brazilian Public Key Infrastructure (ICP-Brasil).

Art. 13. The acts performed in the bidding process are public, except for the cases of information whose secrecy is essential to the security of society and the State, in accordance with the law.

Single paragraph. Advertising will be deferred:

I - as to the content of the proposals, until their opening;

II - as to the Administration's budget, pursuant to art. 24 of this Law.

Art. 14. They may not compete in a bid or participate in the execution of a contract, directly or indirectly:

I - author of the preliminary project, basic project or executive project, individual or legal entity, when the bidding deals with work, services or supply of goods related thereto;

II - company, alone or in a consortium, responsible for the preparation of the basic project or the executive project, or company in which the author of the project is a director, manager, controller, shareholder or holder of more than 5% (five percent) of the capital with the right to vote, technical manager or subcontractor, when the bidding deals with work, services or supply of goods necessary for it;

III - an individual or legal entity who is, at the time of the bidding, unable to participate in the bidding due to a sanction imposed on him;

IV - anyone who maintains a technical, commercial, economic, financial, labor or civil relationship with the head of the contracting agency or entity or with a public agent who plays a role in the bidding or acts in the inspection or management of the contract, or who is their spouse , partner or relative in a straight line, collateral or by affinity, up to the third degree, and this prohibition must be expressly included in the bidding notice;

V - controlling, controlled or affiliated companies, pursuant to Law 6,404, of December 15, 1976, competing with each other;

VI - an individual or legal entity who, in the 5 (five) years prior to the publication of the notice, has been sentenced in court, with a final and unappealable decision, for exploitation of child labor, for submitting workers to conditions analogous to slavery or for hiring adolescents in cases prohibited by labor legislation.

§ 1 The impediment referred to in item III of the **caput of** this article shall also be applied to the bidder acting in substitution for another person, natural or legal, in order to circumvent the effectiveness of the sanction applied to it, including its parent, controlled or affiliate, provided that the tort or fraudulent use of the bidder's legal personality is duly proven.

§ 2 At the discretion of the Administration and exclusively at its service, the author of the projects and the company referred to in items I and II of the **caput of** this article may participate in supporting the hiring planning, bidding execution or management activities of the contract, provided that it is under the exclusive supervision of public agents of the body or entity.

§ 3º Companies belonging to the same economic group are equated with the project's authors.

§ 4 The provisions of this article do not prevent the bidding or contracting of a work or service that includes the preparation of the basic project and the executive project, in the integrated contracts, and the executive project, in the other execution regimes, as the contracted party's charge.

§ 5 In bids and contracts carried out within the scope of projects and programs partially financed by an official foreign cooperation agency or by an international financial organization with resources from the national financing or counterpart, an individual or legal entity that integrates the list of persons sanctioned by these entities or that is declared unsuitable under the terms of this Law.

Art. 15. Unless a duly justified prohibition in the bidding process, a legal entity may participate in a consortium bidding, subject to the following rules:

I - proof of public or private commitment to constitute a consortium, signed by the consortium members;

II - indication of the leading company of the consortium, which will be responsible for its representation before the Administration;

III - admission, for the purpose of technical qualification, of the sum of the amounts of each consortium member and, for the purpose of economic and financial qualification, of the sum of the values ​​of each consortium member;

IV - impediment of the consortium company to participate, in the same bidding, in more than one consortium or in isolation;

V - joint liability of the members for acts performed in a consortium, both in the bidding phase and in the execution of the contract.

§ 1 The notice must establish for the consortium an increase of 10% (ten percent) to 30% (thirty percent) on the amount required of the individual bidder for economic and financial qualification, unless justified.

§ 2 The addition provided for in § 1 of this article does not apply to consortia composed entirely of micro and small companies, as defined by law.

§ 3 The winning bidder is obliged to promote, before the signing of the contract, the constitution and registration of the consortium, under the terms of the commitment referred to in item I of the **caput of** this article.

§ 4 Provided there is technical justification approved by the competent authority, the bidding notice may establish a maximum limit for the number of consortium companies.

§ 5 The replacement of a consortium member must be expressly authorized by the contracting body or entity and subject to proof that the new company of the consortium has at least the same amounts for the purpose of technical qualification and the same values ​​for the purpose of economic and financial qualification presented by the replaced company for the purpose of qualifying the consortium in the bidding process that gave rise to the contract.

Art. 16. Professionals organized in the form of a cooperative may participate in bidding when:

I - the constitution and operation of the cooperative comply with the rules established in the applicable legislation, 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 presents a statement of operation in a cooperative regime, with the sharing of income and expenses among the cooperative members;

III - any cooperative member, with the same qualification, is capable of executing the contracted object, the Administration being prohibited from nominating persons by name;

IV - the object of the bidding refers, in the case of cooperatives covered by Law No. 12,690, of July 19, 2012, to specialized services included in the cooperative's corporate purpose, to be performed in a manner complementary to its performance.

Art. 17. The bidding process will observe the following phases, in sequence:

I - preparatory;

II - disclosure of the bidding notice;

III - presentation of proposals and bids, when applicable;

IV - judgment;

V - enabling;

VI - appeal;

VII - homologation.

§ 1 The phase referred to in item V of the **main** section of this article may, through a motivated act with explanation of the resulting benefits, precede the phases referred to in items III and IV of the **main section of** this article, provided that it is expressly provided for in the bidding notice.

§ 2 The bids will preferably be carried out in electronic form, with the use of in person allowed, provided that it is motivated, and the public session must be recorded in the minutes and recorded in audio and video.

§ 3 As provided in the notice, in the phase referred to in item IV of the **caput of** this article, the bidding agency or entity may, in relation to the provisionally winning bidder, carry out analysis and evaluation of the conformity of the proposal, upon approval of samples, examination of conformity and proof of concept, among other tests of interest to the Administration, in order to prove its adherence to the specifications defined in the terms of reference or in the basic project.

§ 4 In procedures carried out by electronic means, the Administration may determine, as a condition of validity and effectiveness, that bidders perform their acts in electronic format.

§ 5 In the exceptional case of bidding in the presence form referred to in § 2 of this article, the public session for the presentation of proposals must be recorded in audio and video, and the recording will be added to the records of the bidding process after its conclusion.

§ 6 The Administration may require certification by an independent organization accredited by the National Institute of Metrology, Quality and Technology (Inmetro) as a condition for acceptance of:

I - studies, preliminary projects, basic projects and executive projects;

II - conclusion of contract phases or objects;

III - material and technical staff presented by the company for qualification purposes.

CHAPTER II

THE PREPARATORY PHASE

Section I

Instruction of the Bidding Process

Art. 18. The preparatory phase of the bidding process is characterized by planning and must be compatible with the annual contracting plan referred to in item VII of the caput of art. 12 of this Law, whenever prepared, and with budget laws, as well as addressing all technical, marketing and management considerations that may interfere with the contract, including:

I - a description of the need for contracting based on a preliminary technical study that characterizes the public interest involved;

II - the definition of the object to meet the need, through a term of reference, preliminary project, basic project or executive project, as the case may be;

III - the definition of the execution and payment conditions, the guarantees required and offered and the conditions of receipt;

IV - the estimated budget, with the composition of the prices used for its formation;

V - the preparation of the bidding notice;

VI - the preparation of a draft contract, when necessary, which must be included as an annex to the bidding notice;

VII - the regime for the supply of goods, the provision of services or the execution of engineering works and services, observing the potential for economy of scale;

VIII - the modality of bidding, the judgment criteria, the mode of dispute and the adequacy and efficiency of the form of combination of these parameters, for the purposes of selecting the suitable proposal to generate the most advantageous contracting result for the Public Administration, considered the entire lifecycle of the object;

IX - the detailed motivation of the conditions of the notice, such as justification of technical qualification requirements, by indicating the portions of greater technical relevance or significant value of the object, and economic-financial qualification, justification of scoring criteria and judgment of technical proposals , in tenders with judgment for the best technique or technique and price, and justification of the rules pertaining to the participation of companies in a consortium;

X - the analysis of risks that may compromise the success of the bid and the good performance of the contract;

XI - the motivation regarding the moment of disclosure of the bidding budget, observing art. 24 of this Law.

§ 1 The preliminary technical study referred to in item I of the **caput of** this article shall highlight the problem to be solved and its best solution, in order to allow the assessment of the technical and economic feasibility of the contract, and shall contain the following elements:

I - description of the need for hiring, considering the problem to be solved from the perspective of public interest;

II - demonstration of the contracting forecast in the annual contracting plan, whenever prepared, in order to indicate its alignment with the Management's planning;

III - contracting requirements;

IV - estimates of the quantities for contracting, accompanied by calculation logs and supporting documents, which consider interdependencies with other contracts, in order to enable economies of scale;

V - market survey, which consists of the analysis of possible alternatives, and technical and economic justification for choosing the type of solution to be contracted;

VI - estimate of the value of the contract, accompanied by the referential unit prices, calculation logs and supporting documents, which may be included in a classified annex, if the Administration chooses to preserve its confidentiality until the conclusion of the bidding process;

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

VIII - justifications for the subdivision or not of the contract;

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

X - measures to be taken by the Administration prior to the signing of the contract, including regarding the training of civil servants or employees for inspection and contractual management;

XI - related and/or interdependent contracts;

XII - description of possible environmental impacts and respective mitigating measures, including requirements for low consumption of energy and other resources, as well as reverse logistics for undoing and recycling goods and waste, when applicable;

XIII - conclusive position on the adequacy of the contract to meet the need for which it is intended.

§ 2 The preliminary technical study must contain at least the elements provided for in items I, IV, VI, VIII and XIII of § 1 of this article and, when it does not include the other elements provided for in said paragraph, present the appropriate justifications.

§ 3 In the case of a preliminary technical study for contracting common engineering works and services, if the inexistence of prejudice to the measurement of the desired performance and quality standards is demonstrated, the specification of the object may be carried out only in terms of reference or in basic project, the elaboration of projects is not required.

Art. 19. The Administration bodies with regulatory powers related to the activities of administration of materials, works and services and bidding and contracts shall:

I - institute instruments that allow, preferably, the centralization of procedures for the acquisition and contracting of goods and services;

II - create an electronic catalog for the standardization of purchases, services and works, with the adoption of the catalog of the federal Executive Power by all federative entities being permitted;

III - establish a computerized system for monitoring works, including image and video resources;

IV - to institute, with the help of legal advisory and internal control bodies, models of draft notices, terms of reference, standardized contracts and other documents, with the adoption of the drafts of the federal Executive Power by all federative entities being permitted;

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

§ 1 The catalog referred to in item II of the **caput of** this article may be used in bids whose judgment criterion is the lowest price or the highest discount and will contain all documentation and procedures specific to the internal bidding phase, as well as specifications of the respective objects, as provided for in regulation.

§ 2 The non-use of the electronic standardization catalog referred to in item II of the **caput** or of the draft models referred to in item IV of the **caput of** this article must be justified in writing and attached to the respective bidding process.

§ 3 In the bidding for engineering and architectural works and services, whenever appropriate to the object of the bidding, the Construction **Information Modeling** (BIM) or similar or more advanced integrated technologies and processes that may replace it will be preferably adopted -there.

Art. 20. The consumption items purchased to meet the demands of the structures of the Public Administration must be of common quality, not superior to that necessary to fulfill the purposes for which they are intended, the acquisition of luxury items being prohibited.

§ 1 The Executive, Legislative and Judiciary Powers will define in regulations the limits for the classification of consumer goods in the common and luxury categories.

§ 2 From 180 (one hundred and eighty) days after the enactment of this Law, new purchases of consumer goods can only be carried out with the publication, by the competent authority, of the regulation referred to in § 1 of this article.

§ 3 (VETOED).

Article 21.The Administration may call, at least 8 (eight) business days in advance, a public hearing, in person or at a distance, in electronic form, on the bidding it intends to carry out, with prior availability of relevant information, including a preliminary technical study and elements of the notice bidding process, and with the possibility of expression by all interested parties.

Single paragraph. The Administration may also submit the bid for prior public consultation, by making its elements available to all interested parties, who may formulate suggestions within the established period.

Art. 22. The notice may include a risk allocation matrix between the contracting party and the contracted party, in which case the calculation of the estimated value of the contract may consider a risk rate compatible with the object of the bidding and with the risks attributed to the contracted party, of according to a methodology predefined by the federative entity.

§ 1 The matrix referred to in the **caput of** this article shall promote the efficient allocation of the risks of each contract and establish the responsibility that falls to each contracting party, as well as the mechanisms that prevent the occurrence of the claim and mitigate its effects, if this occur during contract performance.

§ 2 The contract must reflect the allocation made by the risk matrix, especially regarding:

I - the hypotheses of alteration for the reestablishment of the economic-financial equation of the contract in cases where the claim is considered in the risk matrix as a cause of imbalance not supported by the party that intends to reestablish;

II - the possibility of resolution when the claim excessively increases or prevents the continuity of the contractual performance;

III - the contracting of mandatory insurance previously defined in the contract, including the cost of contracting the price offered.

§ 3 When the contracting refers to large-scale works and services or the integrated and semi-integrated contracting systems are adopted, the notice must include a risk allocation matrix between the contracting party and the contracted party.

§ 4 In integrated or semi-integrated contracting, the risks arising from facts supervening the contracting associated with the choice of the basic design solution by the contractor must be allocated as their responsibility in the risk matrix.

Article 23.The previously estimated value of the contract must be compatible with the values ​​practiced by the market, considering the prices contained in public databases and the quantities to be contracted, taking into account the potential economy of scale and the peculiarities of the place of execution of the object.

§ 1 In the bidding process for the acquisition of goods and contracting of services in general, according to the regulation, the estimated value will be defined based on the best price measured through the use of the following parameters, adopted in a combined way or not:

I - composition of unit costs less than or equal to the median of the corresponding item in the price consultation panel or in the health price database available on the National Public Contracting Portal (PNCP);

II - similar contracts made by the Public Administration, in execution or concluded in the period of 1 (one) year prior to the date of the price survey, including through a price registration system, observing the corresponding price update index;

III - use of research data published in specialized media, of a reference table formally approved by the federal Executive Branch and of specialized websites or websites of wide domain, provided that they contain the date and time of access;

IV - direct research with at least 3 (three) suppliers, upon formal request for quotation, provided that justification for the choice of these suppliers is presented and that budgets have not been obtained more than 6 (six) months in advance of the disclosure date of the notice;

V - search in the national electronic invoice database, in the form of regulation.

§ 2 In the bidding process for contracting engineering works and services, according to regulation, the estimated value, plus the percentage of reference Indirect Benefits and Expenses (BDI) and the applicable Social Charges (ES), will be defined through the use of parameters in the following order:

I - composition of unit costs less than or equal to the median of the corresponding item of the Reference Costs System of Works (Sicro), for services and transport infrastructure works, or of the National System of Survey of Civil Construction Costs and Indexes (Sinapi) , for other engineering works and services;

II - use of research data published in specialized media, of a reference table formally approved by the federal Executive Branch and of specialized or broad domain websites, provided that they contain the date and time of access;

III - similar contracts made by the Public Administration, in execution or concluded in the period of 1 (one) year prior to the date of the price survey, observing the corresponding price update index;

IV - research in the national electronic invoice database, in the form of regulations.

§ 3 In contracts carried out by Municipalities, States and Federal District, provided that they do not involve federal funds, the previously estimated value of the contract, referred to in the **caput of** this article, may be defined using other cost systems adopted by the respective federative entity.

§ 4 In direct contracts due to unenforceability or waiver, when it is not possible to estimate the value of the object in the manner established in §§ 1, 2 and 3 of this article, the contractor must prove in advance that the prices are in accordance with those practiced in contracts similar objects of the same nature, through the presentation of invoices issued to other contracting parties within a period of up to one (1) year prior to the date of contracting by the Administration, or by other suitable means.

§ 5 In the bidding process for the contracting of engineering works and services under the integrated or semi-integrated contracting regimes, the estimated value of the contract will be calculated pursuant to § 2 of this article, with or without a portion related to risk remuneration, and, whenever necessary and the preliminary project allows, the price estimate will be based on a synthetic budget, based on a cost system defined in item I of § 2 of this article, using an expeditious or parametric methodology and approximate evaluation based on other similar contracts should be reserved for the fractions of the project that are not sufficiently detailed in the draft.

§ 6 In the case of § 5 of this article, bidders or contractors shall be required, in the budget comprising their respective proposals, at least the same level of detail as the synthetic budget referred to in the aforementioned paragraph.

Art. 24. Provided that it is justified, the estimated budget for the contracting may be confidential, without prejudice to the disclosure of the details of the quantities and other information necessary for the preparation of the proposals, and, in this case:

I - confidentiality will not prevail for internal and external control bodies;

II - (VETOED).

Single paragraph. In the event of a bid in which the criterion of judgment for greater discount is adopted, the estimated price or the maximum acceptable will be included in the bidding notice.

Art. 25.The notice must contain the object of the bidding and the rules related to the summons, judgment, qualification, resources and penalties of the bidding, inspection and management of the contract, delivery of the object and payment conditions.

§ 1 Whenever the object allows, the Administration will adopt standardized drafts of notice and contract with uniform clauses.

§ 2. Provided that, as shown in a preliminary technical study, no damage is caused to the competitiveness of the bidding process and the efficiency of the respective contract, the notice may provide for the use of labor, materials, technologies and raw materials existing at the location of the execution, conservation and operation of the good, service or work.

§ 3 All elements of the notice, including a draft contract, terms of reference, draft, projects and other attachments, must be published on an official website on the same date of publication of the notice, without the need for registration or identification for access.

§ 4 In the contracting of large works, services and supplies, the notice must provide for the mandatory implementation of an integrity program by the winning bidder, within 6 (six) months, counted from the execution of the contract, according to the regulation that will provide for the measures to be adopted, the form of proof and the penalties for non-compliance.

§ 5 The notice may provide for the responsibility of the contractor for:

I - obtaining the environmental license;

II - carrying out the expropriation authorized by the government.

§ 6 The environmental licensing of engineering works and services tendered and contracted under the terms of this Law shall have priority in processing in the bodies and entities that are part of the National Environmental System (Sisnama) and shall be guided by the principles of speed, cooperation, economy and efficiency.

§ 7 Regardless of the duration of the contract, it will be mandatory to provide in the notice of price readjustment index, with base date linked to the date of the estimated budget and with the possibility of establishing more than one specific or sectorial index, in accordance with the market reality of the respective inputs.

§ 8 In bidding for continuous services, observing the minimum period of 1 (one) year, the readjustment criterion will be by:

I - readjustment in the strict sense, when there is no regime of exclusive dedication of labor or predominance of labor, by forecasting specific or sectorial indices;

II - renegotiation, when there is a regime of exclusive dedication of labor or predominance of labor, by means of an analytical demonstration of the variation in costs.

§ 9 The notice may, as provided for in the regulation, require that the minimum percentage of the workforce responsible for the execution of the object of the contract is constituted by:

I - women victims of domestic violence;

II - from or from the prison system.

Art. 26. In the bidding process, a margin of preference may be established for:

I - manufactured goods and national services that meet Brazilian technical standards;

II - recycled, recyclable or biodegradable goods, as per regulation.

§ 1 The margin of preference referred to in the **caput of** this article:

I - will be defined in a reasoned decision of the federal Executive Power, in the case of item I of the **caput of** this article;

II - it may be up to 10% (ten percent) of the price of goods and services that do not fall within the provisions of items I or II of the **caput of** this article;

III - it may be extended to manufactured goods and services originating from States Parties to the Southern Common Market (Mercosur), provided that there is reciprocity with the country provided for in an international agreement approved by the National Congress and ratified by the President of the Republic.

§ 2 For national manufactured goods and national services resulting from technological development and innovation in the country, defined in accordance with the regulation of the federal Executive Branch, the margin of preference referred to in the **caput of** this article may be up to 20% (twenty percent) .

§ 3 (VETOED).

§ 4 (VETOED).

§ 5 The margin of preference does not apply to domestic manufactured goods and domestic services if the capacity to produce these goods or provide these services in the country is lower:

I - the quantity to be purchased or contracted; or

II - the amounts established due to the subdivision of the object, when applicable.

§ 6 The bidding documents for the contracting of goods, services and works may, upon prior justification of the competent authority, require the contractor to promote, in favor of an agency or entity that is part of the Public Administration or those appointed by it, based on an equal process , commercial, industrial or technological compensation measures or access to advantageous financing conditions, cumulatively or not, in the form established by the federal executive branch.

§ 7 In contracts for the implementation, maintenance and improvement of information and communication technology systems considered strategic in an act of the federal Executive Branch, the bidding may be restricted to goods and services with technology developed in the country produced in accordance with the process production base referred to in Law No. 10.176, of January 11, 2001.

Art. 27.The list of favored companies as a result of the provisions of art. 26 of this Law, with an indication of the volume of resources allocated to each one of them.

Section II

Bidding Modalities

Art. 28. The bidding modalities are:

I - trading floor;

II - competition;

III - competition;

IV - auction;

V - competitive dialogue.

§ 1 In addition to the modalities referred to in the **caput of** this article, the Administration may use the auxiliary procedures provided for in art. 78 of this Law.

§ 2 The creation of other bidding modalities or the combination of those referred to in the **caput of** this article is prohibited .

Art. 29. The competition and the auction follow the common procedural rite referred to in art. 17 of this Law, adopting the auction whenever the object has performance and quality standards that can be objectively defined by the notice, through usual market specifications.

Single paragraph. The auction does not apply to the hiring of specialized technical services of a predominantly intellectual nature and engineering works and services, except for the engineering services referred to in subparagraph "a" of item XXI of the **caput** of art. 6 of this Law.

Art. 30. The contest will observe the rules and conditions provided for in the notice, which will indicate:

I - the qualification required of the participants;

II - the guidelines and forms of presentation of the work;

III - the conditions for performance and the prize or remuneration to be awarded to the winner.

Single paragraph. In competitions for the elaboration of a project, the winner must give it to the Public Administration, pursuant to art. 93 of this Law, all property rights relating to the project and authorize its execution according to the judgment of convenience and opportunity of the competent authorities.

Art. 31. The auction may be carried out by an official auctioneer or a server designated by the competent authority of the Administration, and regulations shall provide for its operational procedures.

§ 1 If you choose to carry out an auction through an official auctioneer, the Administration must select it by means of accreditation or bidding in the auction modality and adopt the judgment criterion of the highest discount for the commissions to be charged, using the defined percentages as the maximum parameter in the law that regulates the referred profession and observing the values ​​of the goods to be auctioned.

§ 2 The auction will be preceded by the publication of the notice on an official website, which will contain:

I - the description of the property, with its characteristics, and, in the case of real estate, its situation and its boundaries, with reference to registration and records;

II - the value at which the good was appraised, the minimum price at which it may be sold, the payment terms and, if applicable, the commission of the designated auctioneer;

III - the indication of the place where the furniture, vehicles and semi-movements are located;

IV - the website and the period in which the auction will take place, unless exceptionally it is carried out in person due to proven technical unfeasibility or disadvantage for the Administration, in which case the place, day and time of its realization will be indicated ;

V - the specification of any liens, encumbrances or pending items on the goods to be auctioned.

§ 3 In addition to disclosure on the official website, the auction notice will be posted in a place with wide circulation of people at the headquarters of the Administration and may also be disseminated by other means necessary to increase the publicity and competitiveness of the bidding process.

§ 4 The auction will not require prior registration registration, will not have an qualification phase and must be approved as soon as the bidding phase is completed, after the appeal phase is completed and payment is made by the winning bidder, as defined in the notice.

Art. 32. The competitive dialogue modality is restricted to contracts in which the Administration:

I - aims to contract an object that involves the following conditions:

a) technological or technical innovation;

b) impossibility for the body or entity to have its need satisfied without adapting solutions available on the market; and

c) impossibility of the technical specifications being defined with sufficient precision by the Administration;

II - check the need to define and identify the means and alternatives that can satisfy your needs, highlighting the following aspects:

a) the most adequate technical solution;

b) the technical requirements capable of implementing the solution already defined;

c) the legal or financial structure of the contract;

III - (VETOED).

§ 1 In the competitive dialogue modality, the following provisions shall be observed:

I - the Administration will present, at the time of publication of the notice on an official website, its needs and requirements already defined and will establish a minimum period of 25 (twenty-five) business days for expression of interest in participating in the bidding process;

II - the criteria used for the pre-selection of bidders must be provided for in a notice, and all interested parties who meet the established objective requirements will be admitted;

III - the disclosure of information in a discriminatory manner that may imply an advantage for any bidder will be prohibited;

IV - the Administration may not reveal to other bidders the proposed solutions or confidential information communicated by a bidder without its consent;

V - the dialogue phase may be maintained until the Administration, in a well-founded decision, identifies the solution or solutions that meet its needs;

VI - meetings with pre-selected bidders will be recorded in the minutes and recorded using audio and video technological resources;

VII - the notice may provide for the carrying out of successive phases, in which case each phase may restrict the solutions or proposals to be discussed;

VIII - the Administration shall, upon declaring that the dialogue has been concluded, attach to the records of the bidding process the records and recordings of the dialogue phase, start the competitive phase with the disclosure of a notice containing the specification of the solution that meets its needs and the objective criteria to be used to select the most advantageous bid and open a period of not less than 60 (sixty) business days for all pre-selected bidders pursuant to item II of this paragraph to submit their bids, which must contain the necessary elements to carry out the project;

IX - the Administration may request clarifications or adjustments to the proposals presented, as long as they do not imply discrimination or distort competition between the proposals;

X - the Administration will define the winning proposal according to criteria disclosed at the beginning of the competitive phase, ensuring the most advantageous contract as a result;

XI - the competitive dialogue will be conducted by a hiring committee composed of at least 3 (three) permanent civil servants or public employees belonging to the permanent staff of the Administration, with the hiring of professionals for technical assistance to the committee being admitted;

XII - (VETOED).

§ 2 Professionals hired for the purposes of item XI of § 1 of this article shall sign a confidentiality agreement and refrain from activities that may constitute a conflict of interest.

Section III

Judgment Criteria

Art. 33. The judgment of the proposals will be carried out according to the following criteria:

I - lowest price;

II - greater discount;

III - best technique or artistic content;

IV - technique and price;

V - highest bid, in the case of an auction;

VI - greater economic return.

Art. 34. Judging by the lowest price or highest discount and, when applicable, by technique and price will consider the lowest expenditure for the Administration, in compliance with the minimum quality parameters defined in the bidding notice.

§ 1 The indirect costs, related to the expenses of maintenance, use, replacement, depreciation and environmental impact of the bid object, among other factors related to its life cycle, may be considered for the definition of the lowest expenditure, whenever objectively measurable, as provided for in regulation.

§ 2 The judgment for the highest discount will be based on the global price established in the bidding notice, and the discount will be extended to any additional terms.

Art. 35. The judgment for the best technique or artistic content will exclusively consider the technical or artistic proposals presented by the bidders, and the notice must define the prize or remuneration that will be awarded to the winners.

Single paragraph. The judgment criterion referred to in the caput of this article may be used for contracting projects and works of a technical, scientific or artistic nature.

Art. 36. Judging by technique and price will consider the highest score obtained from the weighting, according to objective factors provided for in the notice, of the marks given to the technical and price aspects of the proposal.

§ 1 The judgment criterion referred to in the **caput of** this article will be chosen when a preliminary technical study demonstrates that the evaluation and weighting of the technical quality of the proposals that exceed the minimum requirements established in the notice are relevant to the purposes intended by the Administration in the bidding for contracting in:

I - specialized technical services of a predominantly intellectual nature, in which case the criterion for judging technique and price should preferably be used;

II - services mostly dependent on sophisticated technology and restricted domain, as certified by recognized technical authorities;

III - special information and communication technology goods and services;

IV - special engineering works and services;

V - objects that admit specific and alternative solutions and variations in execution, with significant and concretely measurable repercussions on their quality, productivity, yield and durability, when these solutions and variations can be adopted at the free choice of bidders, according to criteria objectively defined in the notice bidding process.

§ 2 In the judgment by technique and price, the technical proposals must be evaluated and weighed, followed by the price proposals presented by the bidders, in the maximum proportion of 70% (seventy percent) of the valuation for the technical proposal.

§ 3 The past performance in the execution of contracts with the Public Administration must be considered in the technical score, observing the provisions of §§ 3 and 4 of art. 88 of this Law and in regulation.

Art. 37. The judgment by best technique or by technique and price shall be carried out by:

I - verification of the qualification and experience of the bidder, evidenced through the presentation of certificates of works, products or services previously performed;

II - attribution of grades to questions of a qualitative nature by a panel designated for this purpose, in accordance with the guidelines and limits defined in the notice, considering the demonstration of knowledge of the object, the methodology and the work program, the qualification of the technical teams and the list of products that will be delivered;

III - attribution of grades for the performance of the bidder in previous contracts, measured in the supporting documents referred to in § 3 of art. 88 of this Law and in a unified cadastral register available on the National Public Contracting Portal (PNCP).

§ 1 The board referred to in item II of the **caput of** this article will have at least 3 (three) members and may be composed of:

I - permanent civil servants or public employees belonging to the permanent staff of the Public Administration;

II - professionals hired for technical knowledge, experience or renown in the assessment of the requirements specified in the notice, provided that their work is supervised by designated professionals in accordance with the provisions of art. 7 of this Law.

§ 2 (VETOED).

Art. 38. In judging by best technique or by technique and price, obtaining a score due to technical-professional training will require that the execution of the respective contract has the direct and personal participation of the corresponding professional.

Art. 39. The judgment for greater economic return, used exclusively for the execution of an efficiency contract, will consider the greatest savings for the Administration, and the remuneration should be fixed as a percentage that will be proportional to the savings actually obtained in the execution of the contract .

§ 1 In bids that adopt the judgment criterion referred to in the **caput of** this article, bidders shall submit:

I - work proposal, which must include:

a) the works, services or goods, with the respective deadlines for completion or supply;

b) the estimated savings to be generated, expressed as a unit of measure associated with the work, the good or the service and in a monetary unit;

II - price proposal, which will correspond to the percentage of the economy expected to generate during a certain period, expressed in monetary unit.

§ 2 The bidding notice must provide objective parameters for measuring the savings generated with the execution of the contract, which will serve as a basis for calculating the remuneration owed to the contractor.

§ 3 For the purpose of judging the proposal, the economic return will be the result of the savings expected to be generated with the execution of the work proposal, less the price proposal.

§ 4 In cases where the savings provided for in the efficiency contract are not generated:

I - the difference between the contracted savings and the one actually obtained will be deducted from the contractor's remuneration;

II - if the difference between the contracted savings and the one actually obtained is greater than the maximum limit established in the contract, the contracted party will also be subject to other applicable sanctions.

Section IV

Sectoral Provisions

Subsection I

of purchases

Art. 40. Purchase planning must consider the expected annual consumption and observe the following:

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

II - processing through a price registration system, when relevant;

III - determination of units and quantities to be purchased based on probable consumption and use, the estimate of which will be obtained, whenever possible, by means of adequate quantitative techniques, assuming continuous supply;

IV - storage and storage conditions that do not allow the material to deteriorate;

V - compliance with the principles:

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

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

c) fiscal responsibility, by comparing the estimated expenditure with that provided for in the budget.

§ 1 The term of reference must contain the elements provided for in item XXIII of the caput of art. 6 of this Law, in addition to the following information:

I - product specification, preferably according to the electronic standardization catalog, observing the requirements of quality, yield, compatibility, durability and safety;

II - indication of the delivery locations of the products and the rules for provisional and definitive receipts, when applicable;

III - specification of the required warranty and maintenance and technical assistance conditions, when applicable.

§ 2 In applying the principle of installment payment, referring to purchases, the following should be considered:

I - the feasibility of dividing the object into lots;

II - taking advantage of the peculiarities of the local market, with a view to economy, whenever possible, provided that the quality parameters are met; and

III - the duty to seek to increase competition and avoid market concentration.

§ 3 The installment payment will not be adopted when:

I - the economy of scale, the reduction of contract management costs or the greatest advantage in contracting recommend the purchase of the item from the same supplier;

II - the object to be contracted configures a single and integrated system and there is the possibility of risk to the set of the intended object;

III - the process of standardization or brand choice lead to an exclusive supplier.

§ 4 In relation to the information referred to in item III of § 1 of this article, provided that it is based on a preliminary technical study, the Administration may require that maintenance and technical assistance services be provided by means of a technician's displacement or made available in a provision unit services located at a distance compatible with your needs.

Art. 41. In the case of a bidding process involving the supply of goods, the Administration may exceptionally:

I - indicate one or more brands or models, provided that it is formally justified, in the following cases:

a) due to the need to standardize the object;

b) due to the need to maintain compatibility with platforms and standards already adopted by the Administration;

c) when a certain brand or model marketed by more than one supplier is the only one capable of meeting the contracting party's needs;

d) when the description of the object to be tendered can be better understood by the identification of a certain brand or certain model that can only serve as a reference;

II - require a sample or proof of concept of the good in the permanent pre-qualification procedure, in the phase of judgment of proposals or bids, or in the period of validity of the contract or of the price registration minutes, provided that provided for in the bidding notice and justified the need for its presentation;

III - prohibit the contracting of a brand or product, when, through an administrative process, it is proven that products previously acquired and used by the Administration do not meet the essential requirements for full compliance with the contractual obligation;

IV - reasonably request a letter of solidarity issued by the manufacturer, ensuring the execution of the contract, in the case of a reseller or distributor bidder.

Single paragraph. The requirement provided for in item II of the **caput of** this article will be restricted to the provisionally winning bidder when performed in the phase of judgment of proposals or bids.

Art. 42. Proof of the quality of the product presented by the proponents as similar to that of the brands that may be indicated in the notice will be accepted by any of the following means:

I - proof that the product complies with the technical standards determined by the competent official bodies, by the Brazilian Association of Technical Standards (ABNT) or by another entity accredited by Inmetro;

II - declaration of satisfactory service issued by another agency or entity of an equivalent or higher federal level that has purchased the product;

III - certification, certificate, laboratory report or similar document that makes it possible to measure the quality and conformity of the product or the manufacturing process, including the environmental aspect, issued by a competent official institution or by an accredited entity.

§ 1 The notice may require, as a condition of acceptability of the proposal, product quality certification by an institution accredited by the National Council of Metrology, Standardization and Industrial Quality (Conmetro).

§ 2 The Administration may, under the terms of the bid notice, offer a prototype of the intended object and demand, in the bid judgment phase, samples from the provisionally winning bidder, to meet the due diligence or, after judgment, as a condition for signing a contract.

§ 3 In the interest of the Administration, the samples referred to in § 2 of this article may be examined by an institution with an ethical-professional reputation in the specialty of the object, previously indicated in the notice.

Art. 43.The standardization process should contain:

I - technical opinion on the product, considering technical and aesthetic specifications, performance, analysis of previous contracts, cost and conditions of maintenance and warranty;

II - motivated order from the higher authority, with the adoption of the standard;

III - summary of the justification and brief description of the defined standard, published on the official website.

§ 1 Standardization based on a process of another body or entity of a federative level equal to or higher than that of the acquiring body is allowed, and the act that decides to adhere to another standardization must be duly motivated, indicating the need of the Administration and the resulting risks of this decision, and published on an official website.

§ 2 The hiring of solutions based on widespread use **software** will be regulated in a regulation that defines the strategic management process for hiring this type of solution.

Article 44. When there is the possibility of purchasing or leasing goods, the preliminary technical study must consider the costs and benefits of each option, indicating the most advantageous alternative.

Subsection II

Engineering Works and Services

Art. 45. Bidding for engineering works and services must respect, in particular, the rules relating to:

I - environmentally appropriate final disposal of solid waste generated by contracted works;

II - mitigation by conditions and environmental compensation, which will be defined in the environmental licensing procedure;

III - use of products, equipment and services that, demonstrably, favor the reduction of energy and natural resources consumption;

IV - neighborhood impact assessment, in the form of urban legislation;

V - protection of historical, cultural, archeological and immaterial heritage, including through the assessment of the direct or indirect impact caused by the contracted works;

VI - accessibility for people with disabilities or reduced mobility.

Art. 46. In the indirect execution of engineering works and services, the following regimes are accepted:

I - unit price contract;

II - global price contract;

III - full contract;

IV - contracting by task;

V - integrated contracting;

VI - semi-integrated contracting;

VII - supply and provision of associated service.

§ 1 The carrying out of engineering works and services without an executive project is prohibited, except in the case provided for in § 3 of art. 18 of this Law.

§ 2 The Administration is exempt from the preparation of a basic project in cases of integrated contracting, in which case a preliminary project must be prepared in accordance with the methodology defined in an act of the competent body, subject to the requirements established in item XXIV of art. 6 of this Law.

§ 3 In the integrated contracting, after the preparation of the basic project by the contractor, the set of drawings, specifications, memorials and physical-financial schedule must be submitted to the approval of the Administration, which will evaluate its adequacy in relation to the parameters defined in the notice and in accordance with the technical standards, prohibited changes that reduce the quality or the useful life of the project and maintained the full responsibility of the contractor for the risks associated with the basic project.

§ 4 In the integrated and semi-integrated contracting systems, the notice and the contract, whenever applicable, shall provide for the necessary measures to carry out the expropriation authorized by the government, as well as:

I - the person responsible for each phase of the expropriation procedure;

II - the responsibility for the payment of the indemnities due;

III - the estimate of the amount to be paid as indemnity for the expropriated assets, including related costs;

IV - the objective distribution of risks between the parties, including the risk for the difference between the cost of expropriation and the estimated value and for any damages and losses caused by delay in making the expropriated goods available;

V - on behalf of whom the registration of provisional immission in possession and the registration of ownership of the assets to be expropriated shall be promoted.

§ 5 In semi-integrated contracting, with prior authorization from the Administration, the basic project may be changed, provided that the superiority of the innovations proposed by the contracted party in terms of cost reduction, quality increase, execution time reduction or ease of maintenance or operation, with the contractor assuming full responsibility for the risks associated with changing the basic design.

§ 6 The execution of each stage must be preceded by the conclusion and approval, by the competent authority, of the work related to the previous stages.

§ 7 (VETOED).

§ 8 (VETOED).

§ 9 The execution regimes referred to in items II, III, IV, V and VI of the **caput of** this article will be tendered for a global price and will adopt a measurement and payment system associated with the execution of stages of the physical-financial schedule linked to compliance of result targets, the adoption of a remuneration system guided by unit prices or referenced by the execution of quantities of unitary items is prohibited.

Subsection III

Services in General

Art. 47. Bidding services will comply with the following principles:

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

II - subdivision, when it is technically feasible and economically advantageous.

§ 1 In applying the principle of installment payment, the following should be considered:

I - technical responsibility;

II - the cost for the Administration of several contracts in view of the advantages of cost reduction, with the division of the object into items;

III - the duty to seek to increase competition and avoid market concentration.

§ 2 In the bidding for maintenance and technical assistance services, the notice must define the place of performance of the services, assuming the requirement for a technician to travel to the office or the requirement that the contractor has a service delivery unit at a compatible distance with the needs of the Administration.

Art. 48. Material activities incidental, instrumental or complementary to matters that constitute an area of ​​legal competence of the body or entity may be object of execution by third parties, and the Administration or its agents are prohibited from contracting the outsourced service:

I - appoint persons expressly appointed to directly or indirectly execute the contracted object;

II - set a salary lower than that defined by law or in a normative act to be paid by the contractor;

III - establish a relationship of subordination with an employee of an outsourced service provider;

IV - define the form of payment upon exclusive reimbursement of salaries paid;

V - demand the employee of an outsourced service provider to perform tasks outside the scope of the contract object;

VI - provide in a notice of requirements that constitute undue intervention by the Administration in the internal management of the contractor.

Single paragraph. During the term of the contract, the contractor is prohibited from contracting a spouse, partner or relative in a straight line, collateral or by affinity, up to the third degree, of a director of the contracting agency or entity or of a public agent who plays a role in the bidding or acts in the inspection or in the management of the contract, and this prohibition must be expressly stated in the bidding notice.

Article 49. The Administration may, upon express justification, hire more than one company or institution to perform the same service, provided that such hiring does not imply loss of economy of scale, when:

I - the object of the contract can be performed concurrently and simultaneously by more than one contractor; and

II - the multiple execution is convenient to serve the Administration.

Single paragraph. In the event provided for in the caput of this article, the Administration shall maintain individual control of the execution of the contractual object in relation to each of the contracted parties.

Art. 50. In contracting services with a regime of exclusive dedication of labor, the contractor must present, when requested by the Administration, under penalty of fine, proof of compliance with labor obligations and with the Severance Indemnity Fund ( FGTS) in relation to employees directly involved in the execution of the contract, in particular regarding:

I - point record;

II - receipt for payment of salaries, bonuses, overtime, weekly paid rest and thirteenth salary;

III - proof of FGTS deposit;

IV - receipt of concession and payment of vacations and the respective additional;

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

VI - receipt for payment of transport vouchers and food vouchers, as provided for in a collective norm.

Subsection IV

Property Leasing

Art. 51. Subject to the provisions of item V of the caput of art. 74 of this Law, the leasing of real estate must be preceded by a bidding process and prior evaluation of the property, its state of conservation, the costs of adaptations and the period for amortization of the necessary investments.

Subsection V

International Bids

Art. 52. In international bidding, the notice must conform to the guidelines of monetary policy and foreign trade and meet the requirements of Organs competent bodies.

§ 1 When the foreign bidder is allowed to quote a price in foreign currency, the Brazilian bidder may also do so.

§ 2 The payment made to the Brazilian bidder eventually contracted by virtue of a bidding process under the conditions referred to in § 1 of this article shall be made in national currency.

§ 3 The payment guarantees to the Brazilian bidder will be equivalent to those offered to the foreign bidder.

§ 4 The encumbrances levied on prices will be included in the notice and will be defined based on estimates or averages of taxes.

§ 5 The proposals of all bidders will be subject to the same rules and conditions, as established in the notice.

§ 6 Subject to the terms of this Law, the notice may not provide conditions for qualification, classification and judgment that constitute barriers to access to the foreign bidder, assuming the prediction of margin of preference for goods produced in the country and national services that meet Brazilian technical standards , as defined in art. 26 of this Law.

CHAPTER III

DISCLOSURE OF THE BIDDING NOTICE

Art. 53. At the end of the preparatory phase, the bidding process will proceed to the legal advisory body of the Administration, which will carry out prior control of legality through legal analysis of the contract.

§ 1 In the preparation of the legal opinion, the legal advisory body of the Administration shall:

I - assess the bidding process according to prior objective criteria for attributing priority;

II - write your statement in simple and understandable language and in a clear and objective manner, with an appreciation of all the elements essential to the contract and with an explanation of the factual and legal assumptions taken into consideration in the legal analysis;

III - (VETOED).

§ 2 (VETOED).

§ 3 Once the process is completed under the technical and legal aspects, the authority will determine the disclosure of the bidding notice as provided for in art. 54.

§ 4 Under this article, the legal advisory body of the Administration will also carry out prior control of the legality of direct contracts, agreements, terms of cooperation, agreements, adjustments, adherence to price registration minutes, other similar instruments and their additive terms .

§ 5 The legal analysis is unnecessary in the hypotheses previously defined in an act of the maximum competent legal authority, which should consider the low value, the low complexity of the contract, the immediate delivery of the good or the use of minutes of notices and contract instruments, agreement or other adjustments previously standardized by the legal advisory body.

§ 6 (VETOED).

Art. 54. The publicity of the bidding notice will be carried out through the disclosure and maintenance of the entire content of the summoning act and its annexes on the National Public Contracting Portal (PNCP).

§ 1 (VETOED).

§ 2 The additional disclosure and maintenance of the entire content of the notice and its annexes on the official website of the federative entity of the agency or entity responsible for the bidding or, in the case of a public consortium, of the entity with the highest level among them, admitted , also, direct disclosure to interested parties duly registered for this purpose.

§ 3 After the approval of the bidding process, the documents prepared in the preparatory phase that perhaps they have not integrated the notice and its attachments.

CHAPTER IV

SUBMISSION OF PROPOSALS AND BID

Art. 55. The minimum deadlines for submitting proposals and bids, counted from the date of publication of the bidding notice, are:

I - for the acquisition of goods:

a) 8 (eight) business days, when the lowest price or highest discount judgment criteria are adopted;

b) 15 (fifteen) business days, in the cases not covered by sub-item "a" of this item;

II - in the case of services and works:

a) 10 (ten) business days, when the lowest price or highest discount judgment criteria are adopted, in the case of common services and common engineering works and services;

b) 25 (twenty-five) business days, when the lowest price or highest discount judgment criteria are adopted, in the case of special services and special engineering works and services;

c) 60 (sixty) business days, when the execution regime is integrated contracting;

d) 35 (thirty-five) business days, when the execution regime is that of semi-integrated contracting or in the cases not covered by items "a", "b" and "c" of this item;

III - for a bid in which the highest bid judgment criterion is adopted, 15 (fifteen) business days;

IV - for a bid in which the criterion of judging technique and price or best technique or artistic content is adopted, 35 (thirty-five) business days.

§ 1 Any changes in the notice will imply new disclosure in the same way as its initial disclosure, in addition to compliance with the same deadlines as in the original acts and procedures, except when the change does not compromise the formulation of the proposals.

§ 2 The deadlines provided for in this article may, by reasoned decision, be reduced by up to half in bids carried out by the Ministry of Health, within the scope of the Unified Health System (SUS).

Art. 56. The mode of dispute may be, individually or jointly:

I - open, in which case the bidders will present their proposals through successive, increasing or decreasing public bids;

II - closed, in which case the proposals will remain confidential until the date and time designated for their disclosure.

§ 1 The isolated use of the closed dispute mode will be prohibited when the lowest price or highest discount judgment criteria are adopted.

§ 2 The use of the open dispute mode will be prohibited when the criterion of judgment of technique and price is adopted.

§ 3° The following bids will be considered:

I - equal to or lower than the highest already offered, when the highest bid judgment criterion is adopted;

II - equal to or greater than the minor already offered, when the other judgment criteria are adopted.

§ 4 After the definition of the best proposal, if the difference in relation to the proposal ranked second is at least 5% (five percent), the Administration may admit the resumption of the open dispute, under the terms established in the summoning instrument, to the definition of other placements.

§ 5 In the bidding for engineering works or services, after the judgment, the winning bidder must re-elaborate and submit to the Administration, by electronic means, the spreadsheets indicating the quantities and unit costs, as well as detailing the Bonuses and Indirect Expenses ( BDI) and Social Charges (ES), with the respective values ​​appropriate to the final value of the winning bid, allowing the use of unit prices, in the case of global price contract, full contract, semi-integrated contract and integrated contract, exclusively for any necessary adjustments to the physical-financial schedule and to mark out an exceptional subsequent amendment to the contract.

Article 57. The bidding notice may establish a minimum interval for the difference in values ​​between the bids, which will affect both the intermediate bids and the bid that covers the best offer.

Art. 58. At the time of submission of the proposal, proof of payment of an amount as a guarantee of the proposal may be required, as a prerequisite for pre-qualification.

§ 1 The proposal guarantee cannot exceed 1% (one percent) of the estimated value for the contract.

§ 2 The bid guarantee will be returned to the bidders within 10 (ten) business days, counting from the signing of the contract or from the date on which the bid is declared unsuccessful.

§ 3 The refusal to sign the contract or the non-presentation of the documents for the contract shall imply execution of the full value of the bid guarantee.

§ 4 The proposal guarantee may be provided in the modalities referred to in § 1 of art. 96 of this Law.

CHAPTER V

THE JUDGMENT

Art. 59. Proposals that:

I - contain incurable addictions;

II - do not comply with the technical specifications detailed in the notice;

III - present unfeasible prices or remain above the estimated budget for contracting;

IV - do not have their feasibility demonstrated, when required by the Administration;

V - present non-compliance with any other requirements of the notice, as long as it is irremediable.

§ 1 The verification of the conformity of the proposals may be done exclusively in relation to the best classified proposal.

§ 2 The Administration may take steps to assess the feasibility of the proposals or require the bidders to demonstrate it, as provided for in item IV of the caput of this article.

§ 3 In the case of engineering and architectural works and services, for the purpose of assessing the feasibility and surcharge, the overall price, the quantities and the unit prices considered relevant will be considered, observing the criterion of acceptability of unit and global prices to be fixed in the notice, according to the specifics of the corresponding market.

§ 4 In the case of engineering works and services, proposals whose values ​​are less than 75% (seventy-five percent) of the value budgeted by the Administration will be considered unfeasible.

§ 5 In the contracting of engineering works and services, an additional guarantee will be required from the winning bidder whose bid is less than 85% (eighty-five percent) of the amount budgeted by the Administration, equivalent to the difference between the latter and the bid amount, without prejudice to other guarantees required under this Law.

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

I - final dispute, in which case the tied bidders may present a new proposal in an act continuous with the classification;

II - evaluation of the prior contractual performance of bidders, for which cadastral records should preferably be used for the purpose of attesting compliance with the obligations provided for in this Law;

III - development by the bidder of equity actions between men and women in the work environment, as per regulation;

IV - development by the bidder of an integrity program, as directed by the control bodies.

§ 1 Under equal conditions, if there is no tiebreaker, preference will be successively assured to the goods and services produced or provided by:

I - companies established in the territory of the State or Federal District of the bidding agency or entity of the State or District Public Administration or, in the case of a bidding carried out by an agency or entity of the Municipality, in the territory of the State in which it is located;

II - Brazilian companies;

III - companies that invest in research and technology development in the country;

IV - companies that demonstrate the practice of mitigation, pursuant to Law No. 12,187, of December 29, 2009.

§ 2 The rules provided for in the **caput of** this article shall not affect the application of the provisions of art. 44 of Complementary Law No. 123, of December 14, 2006.

Art. 61. Once the result of the judgment has been defined, the Administration may negotiate more advantageous conditions with the first place.

§ 1 The negotiation may be carried out with the other bidders, according to the order of classification initially established, when the first place, even after negotiation, is disqualified due to its proposal remaining above the maximum price defined by the Administration.

§ 2 The negotiation will be conducted by a contracting agent or contracting commission, in the form of a regulation, and, after completion, its result will be disclosed to all bidders and attached to the records of the bidding process.

CHAPTER VI

QUALIFICATION

Art. 62. Qualification is the phase of the bidding in which the set of information and documents necessary and sufficient to demonstrate the bidder's ability to carry out the object of the bidding is verified, divided into:

I - legal;

II - technique;

III - fiscal, social and labor;

IV - economic-financial.

Art. 63. In the bidding phase, the following provisions will be observed:

I - bidders may be required to declare that they meet the qualification requirements, and the declarant will be responsible for the veracity of the information provided, in accordance with the law;

II - the presentation of the qualification documents will be required only by the winning bidder, except when the qualification phase precedes the judgment;

III - documents relating to fiscal regularity will be required, in any case, only after the judgment of the proposals, and only from the highest ranked bidder;

IV - the bidder will be required to declare that it complies with the requirements for the reservation of positions for people with disabilities and for those who are rehabilitated by Social Security, as provided for by law and other specific rules.

§ 1 The bidding notice shall contain a clause requiring the bidders, under penalty of disqualification, to declare that their economic proposals comprise the full cost of meeting the labor rights guaranteed in the Federal Constitution, in labor laws, in infra-legal norms, in collective agreements and under the terms of conduct adjustment in force on the date of submission of the proposals.

§ 2 When the prior assessment of the place of execution is essential for full knowledge of the conditions and peculiarities of the object to be contracted, the bidding notice may provide, under penalty of disqualification, the need for the bidder to certify that he knows the place and the conditions for carrying out the work or service, ensuring him the right to carry out a prior inspection.

§ 3 For the purposes set out in § 2 of this article, the bidding notice must always provide for the possibility of replacing the inspection by a formal declaration signed by the technical responsible of the bidder regarding full knowledge of the conditions and peculiarities of the contract.

§ 4 For the purposes set out in § 2 of this article, if bidders choose to carry out a prior inspection, the Administration shall provide a different date and time for any interested parties.

Art. 64. After the delivery of the documents for qualification, the replacement or presentation of new documents will not be allowed, except in due diligence, to:

I - complementation of information about the documents already presented by the bidders and as long as necessary to ascertain facts existing at the time of the opening of the bidding process;

II - updating of documents whose validity has expired after the date of receipt of the proposals.

§ 1 In the analysis of the qualification documents, the bidding committee may remedy errors or failures that do not change the substance of the documents and their legal validity, through a reasoned order registered and accessible to all, attributing them effectiveness for qualification and classification purposes.

§ 2 When the qualification phase precedes the judgment and has already been concluded, the exclusion of a bidder for reasons related to the qualification will not be allowed, except for supervening facts or facts that are only known after the judgment.

Art. 65. The qualification conditions will be defined in the notice.

§ 1 The companies created in the financial year of the bidding must meet all the qualification requirements and will be authorized to replace the accounting statements by the opening balance.

§ 2 The qualification may be carried out by electronic communication at a distance, under the terms set out in the regulation.

Art. 66. The legal qualification aims to demonstrate the bidder's capacity to exercise rights and assume obligations, and the documentation to be presented by him is limited to proof of the legal existence of the person and, when applicable, authorization for the exercise of the activity to be contracted.

Art. 67. The documentation related to the technical-professional and technical-operational qualification will be restricted to:

I - presentation of a professional, duly registered with the competent professional council, when applicable, holder of a certificate of technical responsibility for the execution of a work or service with similar characteristics, for contracting purposes;

II - certificates or attestations, regularly issued by the competent professional council, when applicable, that demonstrate operational capacity in the execution of similar services of equivalent or superior technological and operational complexity, as well as supporting documents issued pursuant to § 3 of art. 88 of this Law;

III - indication of the technical staff, facilities and equipment available and adequate to carry out the object of the bidding, as well as the qualification of each member of the technical team who will be responsible for the work;

IV - proof of compliance with the requirements provided for in special law, when applicable;

V - registration or registration with the competent professional entity, when applicable;

VI - declaration that the bidder became aware of all the information and local conditions for the fulfillment of the obligations object of the bidding.

§ 1 The requirement of certificates will be restricted to the most relevant or significant portions of the bidding object, thus considering those with an individual value equal to or greater than 4% (four percent) of the total estimated value of the contract.

§ 2 Subject to the provisions of the **caput** and § 1 of this article, the requirement of certificates with minimum quantities of up to 50% (fifty percent) of the installments referred to in that paragraph shall be admitted, with limitations of time and specific places relating to to the certificates.

§ 3 Except when contracting engineering works and services, the requirements referred to in items I and II of the **caput of** this article, at the discretion of the Administration, may be replaced by other proof that the professional or company has technical knowledge and practical experience in performing a service with similar characteristics, in which case acceptable alternative tests should be provided for in a regulation.

§ 4 Certificates or other competent documents issued by foreign entities will be accepted when accompanied by a translation into Portuguese, unless the issuing entity is proven to be inept.

§ 5 In the case of continuous services, the notice may require a certificate or attestation demonstrating that the bidder has performed services similar to the object of the bidding, in successive periods or not, for a minimum period, which may not exceed 3 (three ) years old.

§ 6 The professionals appointed by the bidder in the form of items I and III of the **caput of** this article must participate in the work or service object of the bidding, and their replacement by professionals with equivalent or superior experience will be admitted, provided that it is approved by the Administration.

§ 7 Foreign business companies shall comply with the requirement provided for in item V of the **caput of** this article by submitting, at the time of signing the contract, the registration request before the competent professional entity in Brazil.

§ 8 The requirement of the list of commitments assumed by the bidder that result in a decrease in the availability of technical personnel referred to in items I and III of the **caput of** this article will be admitted .

§ 9 The notice may provide, for specific technical aspects, that the technical qualification is demonstrated by means of certificates relating to potential subcontractors, limited to 25% (twenty-five percent) of the object to be tendered, in which case more than one bidder may submit a certificate for the same potential subcontractor.

§ 10. In case the bidder submits a certificate of previous performance issued in favor of a consortium of which it was a member, if the certificate or the contract of incorporation of the consortium does not identify the activity performed by each consortium member individually, the following criteria will be adopted in evaluating your technical qualification:

I - if the certificate has been issued in favor of a homogeneous consortium, the attested experiences must be recognized for each consortium company in the quantitative proportion of its participation in the consortium, except in the bids for contracting specialized technical services of a predominantly intellectual nature, in which all the attested experiences must be recognized for each of the consortium companies;

II - if the certificate has been issued in favor of a heterogeneous consortium, the attested experiences must be recognized for each consortium member according to their respective fields of activity, including in the tenders for contracting specialized technical services of a predominantly intellectual nature.

§ 11. In the case of § 10 of this article, for purposes of proving the percentage of participation of the consortium member, if this is not expressly stated in the certificate or certificate, a copy of the instrument of incorporation of the consortium must be attached to the certificate or certificate.

§ 12. In the documentation referred to in item I of the **main** section of this article, certificates of technical responsibility of professionals who, in the form of a regulation, have given rise to the application of the sanctions provided for in items III and IV of the **main section** of art. 156 of this Law as a result of proposed guidance, technical prescription or any professional act under its responsibility.

Art. 68. Tax, social and labor qualifications will be verified by verifying the following requirements:

I - registration in the Register of Individuals (CPF) or in the National Register of Legal Entities (CNPJ);

II - the registration in the register of state and/or municipal taxpayers, if any, relating to the bidder's domicile or headquarters, relevant to its field of activity and compatible with the contractual object;

III - the regularity before the federal, state and/or municipal treasury of the bidder's domicile or headquarters, or other equivalent, in accordance with the law;

IV - regularity related to Social Security and FGTS, which demonstrates compliance with the social charges established by law;

V - regularity before the Labor Court;

VI - compliance with the provisions of item XXXIII of art. 7 of the Federal Constitution.

§ 1 The documents referred to in the items in the **main section of** this article may be replaced or supplied, in whole or in part, by other means capable of proving the bidder's regularity, including by electronic means.

§ 2 The proof of compliance with the provisions of items III, IV and V of the **caput of** this article must be made in accordance with the specific legislation.

Art. 69. The economic-financial qualification aims to demonstrate the bidder's economic ability to fulfill the obligations arising from the future contract, and must be objectively proven, by economic coefficients and indexes provided for in the notice, duly justified in the bidding process, and will be restricted to the presentation of the following documentation:

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

II - negative certificate of deeds on bankruptcy issued by the distributor of the bidder's headquarters.

§ 1 At the discretion of the Administration, a statement may be required, signed by a qualified accounting professional, attesting to the bidder's compliance with the economic indexes provided for in the notice.

§ 2 In order to comply with the provisions of the **caput of** this article, the requirement of minimum amounts for previous sales and profitability or profitability indexes is prohibited.

§ 3º The requirement of the list of commitments assumed by the bidder that result in a decrease in its economic-financial capacity is admitted, excluding already-executed portions of signed contracts.

§ 4 The Administration, in purchases for future delivery and in the execution of works and services, may establish in the notice the requirement of minimum capital or minimum equity equivalent to up to 10% (ten percent) of the estimated value of the contract.

§ 5 The requirement of indices and values ​​not usually adopted for the assessment of a sufficient economic and financial situation to comply with the obligations arising from the bidding is prohibited.

§ 6 The documents referred to in item I of the **caput of** this article shall be limited to the last fiscal year in case the legal entity was incorporated less than 2 (two) years ago.

Art. 70. The documentation referred to in this Chapter may be:

I - presented in original, by copy or by any other means expressly admitted by the Administration;

II - replaced by cadastral registration issued by a public agency or entity, provided that it is provided for in the notice and that the registration has been made in compliance with the provisions of this Law;

III - waived, in whole or in part, in contracts for immediate delivery, in contracts in amounts less than 1/4 (one quarter) of the limit for waiver of bidding for purchases in general and in product contracts for research and development up to the value of BRL 300,000.00 (three hundred thousand reais).

Single paragraph. Foreign companies that do not operate in the country must submit equivalent documents, in the form of regulations issued by the federal executive branch.

CHAPTER VII

CLOSING THE BIDDING

Art. 71. At the end of the judgment and qualification phases, and the administrative appeals have been exhausted, the bidding process will be forwarded to the higher authority, which may:

I - determine the return of the records to remedy irregularities;

II - revoke the bid for reasons of convenience and opportunity;

III - proceed with the annulment of the bidding, ex officio or upon provocation by third parties, whenever this irremediable illegality is present;

IV - award the object and ratify the bid.

§ 1 When pronouncing the nullity, the authority will expressly indicate the acts with irreparable vices, rendering ineffective all the subsequent ones that depend on them, and will give rise to the determination of the responsibility of the one who caused them.

§ 2 The determining reason for the revocation of the bidding process must result from a duly proven supervening fact.

§ 3 In cases of annulment and revocation, the prior manifestation of the interested parties must be ensured.

§ 4 The provisions of this article shall apply, as applicable, to direct contracting and auxiliary bidding procedures.

CHAPTER VIII

DIRECT CONTRACTING

**Section I**

Direct Hiring Process

Article 72. The direct contracting process, which includes cases of unenforceability and waiver of bidding, must be accompanied by the following documents:

I - demand formalization document and, if applicable, preliminary technical study, risk analysis, term of reference, basic project or executive project;

II - expense estimate, which must be calculated in the manner established in art. 23 of this Law;

III - legal opinion and technical opinions, if applicable, that demonstrate compliance with the required requirements;

IV - demonstration of the compatibility of the forecast of budgetary resources with the commitment to be assumed;

V - proof that the contractor fulfills the minimum qualification and qualification requirements;

VI - reason for choosing the contractor;

VII - price justification;

VIII - authorization from the competent authority.

Single paragraph. The act authorizing direct contracting or the extract resulting from the contract must be disclosed and kept available to the public on an official website.

Art. 73. In the event of improper direct contracting occurring with fraud, fraud or gross error, the contractor and the responsible public agent will be jointly liable for the damage caused to the treasury, without prejudice to other applicable legal sanctions.

**Section II**

Unenforceability of Bidding

Art. 74. Bidding is not required when competition is unfeasible, especially in cases of:

I - acquisition of materials, equipment or goods or contracting of services that can only be provided by an exclusive producer, company or commercial representative;

II - hiring a professional in the artistic sector, directly or through an exclusive entrepreneur, provided that it is recognized by the specialized critics or public opinion;

III - contracting of the following specialized technical services of a predominantly intellectual nature with professionals or companies of notorious specialization, with no requirement for advertising and dissemination services:

a) technical studies, planning, basic projects or executive projects;

b) opinions, expertise and evaluations in general;

c) technical advice or consultancy and financial or tax audits;

d) inspection, supervision or management of works or services;

e) sponsorship or defense of judicial or administrative cases;

f) training and improvement of personnel;

g) restoration of works of art and goods of historical value;

h) quality and technological controls, analyses, field and laboratory tests and tests, instrumentation and monitoring of specific parameters of works and the environment and other engineering services that fall within the provisions of this item;

IV - objects that must or can be hired through accreditation;

V - acquisition or lease of property whose characteristics of facilities and location make your choice necessary.

§ 1 For the purposes of the provisions of item I of the caput of this article, the Administration shall demonstrate the infeasibility of competition by means of an exclusivity certificate, exclusivity contract, manufacturer's declaration or other suitable document capable of proving that the object is supplied or provided by a producer , company or exclusive commercial representative, the preference for a specific brand is prohibited.

§ 2 For the purposes of the provisions of item II of the **caput of** this article, an individual or legal entity that has a contract, declaration, letter or other document attesting to the permanent and continuous exclusivity of representation, in the Country or in a specific State, is considered to be an exclusive entrepreneur. , from the professional in the artistic sector, the possibility of direct contracting due to unenforceability through a businessman with representation restricted to a specific event or location was ruled out.

§ 3 For the purposes of the provisions of item III of the **caput of** this article, the professional or company whose concept in the field of their specialty, resulting from previous performance, studies, experience, publications, organization, rigging, technical team, is considered to be a well-known specialization. or other requirements related to its activities, allow us to infer that its work is essential and admittedly adequate to fully satisfy the object of the contract.

§ 4 In contracts based on item III of the **caput of** this article, the subcontracting of companies or the performance of professionals other than those who have justified the unenforceability is prohibited.

§ 5 In contracts based on item V of the **main** section of this article, the following requirements must be observed:

I - prior assessment of the property, its state of conservation, the costs of adaptations, when essential to the needs of use, and the period for amortization of the investments;

II - certification of the inexistence of vacant and available public properties that meet the purpose;

III - justifications that demonstrate the uniqueness of the property to be purchased or leased by the Administration and that demonstrate an advantage for it.

**Section III**

Bid Waiver

Art. 75. Bidding is not required:

I - for contracts involving amounts below R$ 100,000.00 (one hundred thousand reais), in the case of engineering works and services or maintenance services for motor vehicles;

II - for contracting involving amounts below R$ 50,000.00 (fifty thousand reais), in the case of other services and purchases;

III - for a contract that maintains all the conditions defined in a bid notice held less than 1 (one) year ago, when it is verified that in that bid:

a) interested bidders did not appear or valid bids were not presented;

b) the proposals presented consigned prices clearly higher than those practiced in the market or incompatible with those set by the competent official bodies;

IV - for contracts whose purpose is:

a) goods, components or parts of national or foreign origin necessary for the maintenance of equipment, to be purchased from the original supplier of such equipment during the technical warranty period, when this exclusivity condition is essential for the validity of the warranty;

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

c) products for research and development, limited to contracting, in the case of engineering works and services, at the amount of R$ 300,000.00 (three hundred thousand reais);

d) transfer of technology or licensing of the right to use or exploit protected creations, in contracts carried out by a public scientific, technological and innovation institution (ICT) or by a development agency, provided that an advantage for the Administration is demonstrated;

e) horticultural products, breads and other perishable goods, in the period necessary to carry out the corresponding bidding processes, in which case the contracting will be carried out directly based on the price of the day;

f) goods or services produced or provided in the country that cumulatively involve high technological complexity and national defense;

g) materials for use by the Armed Forces, with the exception of materials for personal and administrative use, when there is a need to maintain the standardization required by the logistical support structure of naval, air and land resources, upon authorization by an act of the commander of the military force;

h) goods and services to meet the military contingents of the Brazilian single forces employed in peace operations abroad, in which case the hiring must be justified as to the price and choice of supplier or contractor and ratified by the commander of the military force;

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

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

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

l) specialized services or acquisition or rental of equipment for tracking and obtaining evidence provided for in items II and V of the main section of art. 3 of Law No. 12,850, of August 2, 2013, when there is a justified need to maintain confidentiality about the investigation;

m) acquisition of medicines intended exclusively for the treatment of rare diseases defined by the Ministry of Health;

V - for contracting with a view to complying with the provisions of arts. 3rd, 3rd-A, 4th, 5th and 20 of Law 10973, of December 2, 2004, subject to the general principles of contracting contained in said Law;

VI - for hiring that may compromise national security, in cases established by the Minister of State for Defense, upon demand from the commands of the Armed Forces or other ministries;

VII - in cases of war, state of defence, state of siege, federal intervention or serious disturbance of order;

VIII - in cases of emergency or public calamity, when characterized as an urgency to respond to a situation that may cause damage or compromise the continuity of public services or the safety of people, works, services, equipment and other goods, public or private, and only for the acquisition of the goods necessary to meet the emergency or calamitous situation and for the portions of works and services that can be completed within a maximum period of 1 (one) year, counted from the date of occurrence of the emergency or calamity, the extension of the respective contracts and the rehiring of a company already contracted based on the provisions of this item;

IX - for the acquisition, by a legal entity governed by public law, of goods produced or services provided by a body or entity that integrates the Public Administration and that have been created for this specific purpose, provided that the contracted price is compatible with that practiced in the Marketplace;

X - when the Union has to intervene in the economic domain to regulate prices or normalize supply;

XI - for the execution of a program contract with a federative entity or with an entity of its indirect Public Administration that involves the provision of public services in an associated manner under the terms authorized in a public consortium contract or in a cooperation agreement;

XII - for hiring in which there is a transfer of technology from strategic products to the Unified Health System (SUS), as listed in an act of the national direction of the SUS, including at the time of acquisition of these products during the stages of technological absorption, and in values compatible with those defined in the instrument signed for the transfer of technology;

XIII - for hiring professionals to compose the technical criteria evaluation committee, in the case of a technical professional of notorious specialization;

XIV - for the contracting of a non-profit association of people with disabilities, of proven suitability, by an agency or entity of the Public Administration, for the provision of services, provided that the contracted price is compatible with what is practiced in the market and the contracted services are provided exclusively by people with disabilities;

XV - for hiring a Brazilian institution whose statutory purpose is to support, capture and carry out activities of teaching, research, extension, institutional, scientific and technological development and encourage innovation, including to manage these activities administratively and financially, or to hire an institution dedicated to the social recovery of the imprisoned person, as long as the contractor has an unquestionable ethical and professional reputation and is not for profit;

XVI - for the acquisition, by a legal entity governed by public law, of strategic inputs for health produced by a foundation that, by law or bylaws, has the purpose of supporting a direct Public Administration body, its autarchy or foundation in teaching, research, extension projects , institutional, scientific and technological development and encouragement of 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 **main** section of this article, and that has been created for this specific purpose on a date prior to the entry into force of this Law, provided that the contracted price is compatible with that practiced in the market.

§ 1 For the purposes of measuring the values ​​that meet the limits referred to in items I and II of the **caput of** this article, the following shall be observed:

I - the sum of what is spent in the financial year by the respective management unit;

II - the sum of expenses incurred with objects of the same nature, understood as those relating to contracts in the same field of activity.

§ 2 The amounts referred to in items I and II of the **caput of** this article shall be doubled for purchases, works and services contracted by a public consortium or by an autarchy or foundation qualified as executive agencies in accordance with the law.

§ 3 The contracts referred to in items I and II of the **caput of** this article shall preferably be preceded by the disclosure of a notice on an official website, for a minimum period of 3 (three) business days, with the specification of the intended object and with the manifestation of Management's interest in obtaining additional proposals from any interested parties, and the most advantageous proposal should be selected.

§ 4 The contracts referred to in items I and II of the **caput of** this article shall preferably be paid by means of a payment card, the statement of which must be disclosed and made available to the public on the National Public Contracting Portal (PNCP).

§ 5 The exemption provided for in item "c" of item IV of the **caput of** this article, when applied to engineering works and services, will follow special procedures established in specific regulations.

§ 6 For the purposes of item VIII of the **caput of** this article, hiring by dismissal in order to maintain the continuity of the public service is considered emergency, and the values ​​practiced by the market in accordance with art. 23 of this Law and the necessary measures have been taken to conclude the bidding process, without prejudice to the determination of the responsibility of the public agents who gave rise to the emergency situation.

§ 7 The provisions of § 1 of this article do not apply to contracts of up to BRL 8,000.00 (eight thousand reais) of maintenance services for motor vehicles owned by the contracting agency or entity, including the supply of parts.

CHAPTER IX

ALIENATIONS

Article 76.The sale of Public Administration assets, subject to the existence of a duly justified public interest, will be preceded by an evaluation and will comply with the following rules:

I - in the case of immovable property, including those belonging to autarchies and foundations, it will require legislative authorization and will depend on bidding in the auction modality, bidding is waived in the cases of:

a) payment in kind;

b) donation, permitted exclusively to another body or entity of the Public Administration, from any sphere of government, except for the provisions of items "f", "g" and "h" of this item;

c) exchange for other properties that meet the requirements related to the main purposes of the Administration, provided that the difference found does not exceed half of the value of the property that will be offered by the Federal Government, according to a prior assessment, and the value changes, whenever the case;

d) endowment;

e) sale to another Public Administration body or entity in any sphere of government;

f) free or onerous alienation, tenure, concession of real right of use, lease and permission to use residential real estate built, intended or effectively used in housing or land regularization programs of social interest developed by a body or entity of the Public Administration ;

g) free or onerous alienation, tenancy, granting of real right of use, lease and permission to use commercial real estate at a local level, with an area of ​​up to 250 m² (two hundred and fifty square meters) and intended for land regularization programs of social interest developed by a Public Administration body or entity;

h) alienation and granting of the real right of use, free of charge or onerous, of rural public lands of the Union and of the National Institute of Colonization and Agrarian Reform (Incra) where occupations occur up to the limit referred to in § 1 of art. 6 of Law No. 11,952, of June 25, 2009, for land tenure regularization purposes, in compliance with the legal requirements;

i) legitimacy of ownership referred to in art. 29 of Law No. 6383, of December 7, 1976, upon the initiative and deliberation of the competent Public Administration bodies;

j) land legitimacy and legitimacy of ownership referred to in Law No. 13,465, of July 11, 2017;

II - in the case of movable property, it will depend on a bidding process in the auction modality, the bidding process being waived in the cases of:

a) donation, allowed exclusively for purposes and use of social interest, after evaluation of opportunity and socioeconomic convenience in relation to choosing another form of disposal;

b) exchange, allowed exclusively between bodies or entities of the Public Administration;

c) sale of shares, which may be traded on the stock exchange, in compliance with specific legislation;

d) sale of securities, in compliance with the relevant legislation;

e) sale of goods produced or sold by Public Administration entities, due to their purposes;

f) sale of materials and equipment without foreseeable use by those who have them for other bodies or entities of the Public Administration.

§ 1 The sale of real estate belonging to the Public Administration, the acquisition of which has been derived from court proceedings or from payment in kind, will dispense with legislative authorization and will only require prior assessment and bidding in the auction modality.

§ 2 The properties donated based on item "b" of item I of the **main** section of this article, once the reasons justifying their donation, will be reverted to the assets of the donating legal entity, their sale by the beneficiary being prohibited.

§ 3 The Administration may grant ownership title or real right to use the property, with the waiver of bidding allowed, when the use is intended for:

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

II - natural person who, under the terms of the law, regulation or normative act of the competent body, has implemented the minimum requirements of culture, peaceful and peaceful occupation and direct exploration of rural areas, subject to the limit referred to in § 1 of art. 6 of Law No. 11,952, of June 25, 2009.

§ 4 The application of the provisions of item II of § 3 of this article shall be exempt from legislative authorization and shall be subject to the following conditions:

I - exclusive application to areas where detention by a private person is demonstrably prior to December 1, 2004;

II - submission to the other requirements and impediments of the legal and administrative regime for the destination and land regularization of public lands;

III - prohibition of concessions for exploration not contemplated in the agrarian law, in the laws of destination of public lands or in the legal or administrative norms of ecological-economic zoning;

IV - provision for automatic extinction of the concession, notification being waived, in case of declaration of public utility, public need or social interest;

V - exclusive application to property located in a rural area and not subject to prohibition, impediment or inconvenience to exploitation through agricultural activity;

VI - limitation to areas referred to in § 1 of art. 6 of Law No. 11.952, of June 25, 2009, the waiver of bidding for higher areas is prohibited;

VII - accumulation with the quantity of area resulting from the case provided for in item "i" of item I of the **main** section of this article up to the limit provided for in item VI of this paragraph.

§ 5 Investiture is understood, for the purposes of this Law, to:

I - disposal, to the owner of a neighboring property, of a remaining area or resulting from a public work that becomes unusable in isolation, for a price that is not less than the appraisal nor more than 50% (fifty percent) of the maximum amount allowed for exemption from bidding for goods and services provided for in this Law;

II - alienation, to the legitimate direct owner or, failing that, to the government, of property for residential purposes built in an urban nucleus attached to the hydroelectric plant, provided that it is considered dispensable in the plant's operation phase and that it does not belong to the category of assets reversible at the end of the concession.

§ 6 The donation with charge will be auctioned and its instrument will contain, obligatorily, the charges, the term of its fulfillment and the reversal clause, under penalty of nullity of the act, the bidding waived in case of duly justified public interest.

§ 7 In the case of § 6 of this article, if the grantee needs to offer the property as a guarantee of financing, the reversal clause and the other obligations will be guaranteed by a second degree mortgage in favor of the donor.

Article 77.For the sale of real estate, a preemptive right will be granted to the bidder who, subject to all the rules of the notice, proves the occupation of the property object of the bidding.

CHAPTER X

AUXILIARY INSTRUMENTS

**Section I**

Auxiliary Procedures

Art. 78. The following are auxiliary procedures for bidding and contracting governed by this Law:

I - accreditation;

II - pre-qualification;

III - expression of interest procedure;

IV - price registration system;

V - cadastral record.

§ 1 The auxiliary procedures referred to in the caput of this article shall comply with clear and objective criteria defined in regulation.

§ 2 The judgment that arises from the auxiliary bidding procedures provided for in items II and III of the **caput of** this article will follow the same bidding procedure.

**Section II**

Accreditation

Art. 79. Accreditation may be used in the following cases of contracting:

I - parallel and non-excluding: case in which it is feasible and advantageous for the Administration to carry out simultaneous contracts under standardized conditions;

II - with selection at the discretion of third parties: in which case the selection of the contractor is under the responsibility of the direct beneficiary of the service;

III - in fluid markets: case in which the constant fluctuation in the value of the service and in the contracting conditions makes it impossible to select an agent through a bidding process.

Single paragraph. Accreditation procedures will be defined in a regulation, subject to the following rules:

I - the Administration shall disclose and keep available to the public, on an official website, a call notice for interested parties, in order to allow the permanent registration of new interested parties;

II - in the event of item I of the caput of this article, when the object does not allow the immediate and simultaneous hiring of all accredited persons, objective criteria for the distribution of demand shall be adopted;

III - the call notice for interested parties must provide for the standard conditions for contracting and, in the cases of items I and II of the **caput of** this article, must define the contract value;

IV - in the event of item III of the **caput of** this article, the Management shall record the market quotations in force at the time of contracting;

V - the commitment to third parties of the contracted object will not be allowed without the express authorization of the Administration;

VI - the denunciation will be admitted by either party within the deadlines established in the notice.

**Section III**

Pre-Qualification

Art. 80. Pre-qualification is the technical-administrative procedure to previously select:

I - bidders who meet qualifying conditions to participate in a future bid or bid linked to objectively defined work or service programs;

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

§ 1 In the pre-qualification, the following will be observed:

I - when open to bidders, documents that are already included in the registration record may be dispensed with;

II - when open to goods, proof of quality may be required.

§ 2 The pre-qualification procedure will be permanently open for the registration of interested parties.

§ 3 Regarding the pre-qualification procedure, the notice will include:

I - the minimum information necessary to define the object;

II - the modality, the form of the future bidding and the judgment criteria.

§ 4 The presentation of documents shall be made before a body or committee appointed by the Administration, which shall examine them within a maximum period of 10 (ten) business days and determine correction or resubmission of documents, when applicable, with a view to increased competition.

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

§ 6 The pre-qualification may be carried out in groups or segments, according to the specialties of the suppliers.

§ 7 The pre-qualification may be partial or total, with some or all of the technical or qualification requirements necessary for hiring, ensuring, in any event, the equality of conditions between the competitors.

§ 8 Regarding the term, the pre-qualification will be valid:

I - of 1 (one) year, at the most, and may be updated at any time;

II - not exceeding the validity period of the documents submitted by the interested parties.

§ 9 Bidders and pre-qualified goods will be mandatorily disclosed and kept available to the public.

§ 10. The bidding that follows the pre-qualification procedure may be restricted to pre-qualified bidders or goods.

Section IV

The Expression of Interest Procedure

Art. 81. The Administration may request the private sector, through an open procedure of expression of interest to be initiated with the publication of a public call notice, to propose and carry out studies, investigations, surveys and projects of innovative solutions that contribute to matters of public relevance, in the form of a regulation.

§ 1 The studies, investigations, surveys and projects related to the contracting and useful for the bidding, carried out by the Administration or with its authorization, will be available to the interested parties, and the winner of the bid shall reimburse the corresponding expenses, as specified in the notice.

§ 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 caput of this article:

I - will not grant the producer a preemptive right in the bidding process;

II - will not oblige the government to carry out a bidding process;

III - will not imply, by itself, the right to reimbursement of amounts involved in its preparation;

IV - will be remunerated only by the winner of the bid, in any event, the collection of amounts from the public authorities is prohibited.

§ 3 For the acceptance of the products and services referred to in the **caput of** this article, the Administration shall prepare a reasoned opinion with the demonstration that the product or service delivered is adequate and sufficient to understand the object, that the assumptions adopted are compatible with the real needs of the body and that the proposed methodology is the one that provides the greatest economy and advantage among the others possible.

§ 4 The procedure provided for in the **caput of** this article may be restricted to startups, thus considered individual microentrepreneurs, microenterprises and small businesses, of 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, requiring, in the definitive selection of the innovation, prior validation based on objective metrics, in order to demonstrate compliance with the Management's needs.

**Section V**

Price Registration System

Art. 82. The bid notice for price registration shall observe the general rules of this Law and shall provide for:

I - the specifics of the bidding and its object, including the maximum quantity of each item that can be purchased;

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

III - the possibility of predicting different prices:

a) when the object is made or delivered in different places;

b) due to the form and location of packaging;

c) when a variable quotation is allowed due to the lot size;

d) for other reasons justified in the process;

IV - the possibility of the bidder offering or not a proposal in a quantity lower than the maximum provided for in the notice, being bound by its limits;

V - the criterion for judging the bid, which will be the lowest price or the highest discount on the price list practiced in the market;

VI - the conditions for changing registered prices;

VII - the registration of more than one supplier or service provider, as long as they accept to quote the object at a price equal to that of the winning bidder, ensuring contracting preference in accordance with the ranking order;

VIII - the prohibition of the participation of the body or entity in more than one price registration minutes with the same object within the validity period of the one in which it has already participated, except in the occurrence of minutes that have registered a quantity lower than the maximum provided for in the notice;

IX - the hypotheses of cancellation of the price registration minutes and its consequences.

§ 1 The lowest price judgment criterion per group of items may only be adopted when the impossibility of promoting the award per item is demonstrated and its technical and economic advantage is evidenced, and the maximum unit price acceptability criterion shall be indicated in the notice.

§ 2 In the hypothesis referred to in § 1 of this article, observing the parameters established in §§ 1, 2 and 3 of art. 23 of this Law, the subsequent contracting of a specific item contained in a group of items will require prior market research and demonstration of its advantage for the body or entity.

§ 3 It is allowed to register prices with indication limited to contracting units, without indication of the total to be purchased, only in the following situations:

I - when it is the first bid for the object and the body or entity has no record of previous demands;

II - in the case of perishable food;

III - in the case where the service is integrated with the supply of goods.

§ 4 In the situations referred to in § 3 of this article, it is mandatory to indicate the maximum amount of the expense and the participation of another body or entity in the minutes is prohibited.

§ 5 The price registration system may be used to contract goods and services, including engineering works and services, subject to the following conditions:

I - prior performance of extensive market research;

II - selection in accordance with the procedures provided for in regulation;

III - mandatory development of control routine;

IV - periodic update of registered prices;

V - definition of the validity period of the price registration;

VI - inclusion, in the price registration minutes, of the bidder who accepts to quote the goods or services at prices equal to those of the winning bidder following the classification of the bid and inclusion of the bidder who maintains its original bid.

§ 6 The price registration system may, in the form of regulation, be used in cases of unenforceability and waiver of bidding for the acquisition of goods or for the contracting of services by more than one body or entity.

Art. 83. The existence of registered prices will imply a commitment to supply under the established conditions, but will not oblige the Administration to contract, with the possibility of carrying out a specific bidding process for the intended acquisition, provided that it is duly motivated.

Art. 84. The term of validity of the price registration minutes will be 1 (one) year and may be extended for an equal period, provided that the advantageous price is proven.

Single paragraph. The contract resulting from the price registration minutes will have its validity established in accordance with the provisions contained therein.

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

I - existence of a standardized project, without technical and operational complexity;

II - permanent or frequent need for a work or service to be contracted.

Art. 86. The managing body or entity shall, in the preparatory phase of the bidding process, for the purposes of price registration, carry out a public procedure of intention to register prices to, under the terms of the regulation, make it possible, for a minimum period of 8 (eight ) business days, the participation of other bodies or entities in the respective minutes and determine the total estimate of contracting quantities.

§ 1 The procedure provided for in the **caput of** this article shall be unnecessary when the managing body or entity is the sole contracting party.

§ 2 If they do not participate in the procedure provided for in the **caput of** this article, bodies and entities may adhere to the price registration minutes as non-participants, subject to the following requirements:

I - presentation of justification for the advantage of joining, including in situations of probable shortages or discontinuity of public service;

II - demonstration that the registered values ​​are compatible with the values ​​practiced by the market pursuant to art. 23 of this Law;

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

§ 3 The faculty granted by § 2 of this article shall be limited to bodies and entities of the federal, state, district and municipal Public Administration that, as non-participants, wish to adhere to the price registration minutes of a federal, state managing agency or entity or district.

§ 4 The acquisitions or additional contracts referred to in § 2 of this article may not exceed, by agency or entity, 50% (fifty percent) of the quantity of the items of the summoning instrument registered in the price registration minutes for the managing body and for participating bodies.

§ 5 The quantity resulting from adhesions to the price registration minutes referred to in § 2 of this article may not exceed, in totality, twice the quantity of each item registered in the price registration minutes for the managing agency and participating agencies , regardless of the number of non-participating bodies that join.

§ 6 Adherence to the price registration minutes of an agency or entity managing the federal Executive Power by agencies and entities of the state, district and municipal Public Administration may be required for the purposes of voluntary transfers, not being subject to the limit referred to in § 5 of this article is intended for the decentralized execution of a federal program or project and the compatibility of registered prices with market values ​​pursuant to art. 23 of this Law.

§ 7 For emergency purchase of medicines and medical-hospital consumables by federal, state, district and municipal agencies and entities, adherence to the price registration minutes managed by the Ministry of Health shall not be subject to the limit referred to. § 5 of this article.

§ 8 The bodies and entities of the Federal Public Administration shall be prohibited from adhering to the price registration minutes managed by a state, district or municipal agency or entity.

**Section VI**

Registration Registration

Art. 87. For the purposes of this Law, the bodies and entities of the Public Administration shall use the unified registration system available on the National Public Contracting Portal (PNCP), for the purpose of unified registration of bidders, as provided for in the regulation.

§ 1 The unified cadastral registration system will be public and should be widely publicized and permanently open to interested parties, and public calls through the internet will be mandatory, at least annually, to update existing records and for the entry of new interested parties.

§ 2 The requirement, by the bidding agency or entity, of a complementary registration record for access to the notice and attachments is prohibited.

§ 3 The Administration may carry out a bidding restricted to registered suppliers, in compliance with the criteria, conditions and limits established in the regulation, as well as wide publicity of the procedures for registration.

§ 4 In the case referred to in § 3 of this article, a supplier will be allowed to register within the period provided for in the notice for the submission of proposals.

Art. 88. When requesting, at any time, registration in the register or its updating, the interested party will provide the necessary elements required for qualification provided for in this Law.

§ 1 The applicant, considering his area of ​​expertise, will be classified by categories, subdivided into groups, according to the technical and economic-financial qualification evaluated, in accordance with objective rules published on an official website.

§ 2 The applicant will be provided with a certificate, renewable whenever the registration is updated.

§ 3 The performance of the contracted party in the fulfillment of obligations assumed will be evaluated by the contracting party, who will issue a document evidencing the evaluation carried out, mentioning its performance in the contract execution, based on objectively defined and measured indicators, and any penalties applied, which will be included of the cadastral record in which the registration is made.

§ 4 The annotation of the performance of obligations by the contractor, referred to in § 3 of this article, shall be subject to the implementation and regulation of the registration of the certificate of fulfillment of obligations, able to carry out the registration objectively, in compliance with the principles of impersonality, equality, isonomy, publicity and transparency, in order to enable the implementation of incentive measures for bidders who have excellent performance recorded in their registration records.

§ 5 At any time, the registration of a member who fails to meet the requirements determined by this Law or by regulation may be changed, suspended or canceled.

§ 6 The interested party that requests registration in the form of the caput of this article may participate in the bidding process until the decision of the Administration, and the execution of the contract will be subject to the issuance of the certificate referred to in § 2 of this article.

TITLE III

ADMINISTRATIVE CONTRACTS

CHAPTER I

FORMALIZATION OF CONTRACTS

Art. 89. The contracts dealt with in this Law shall be regulated by its clauses and by the precepts of public law, and to them, the principles of the general theory of contracts and the provisions of private law will be applied, in addition.

§ 1 Every contract must mention the names of the parties and their representatives, the purpose, the act that authorized its execution, the number of the bidding process or direct contracting and the subjection of the contracting parties to the rules of this Law and the contractual clauses.

§ 2 The contracts must clearly and precisely establish the conditions for their execution, expressed in clauses that define the rights, obligations and responsibilities of the parties, in accordance with the terms of the bidding notice and those of the winning bid or with the terms of the act that authorized the direct contracting and those of the respective proposal.

Art. 90. The Administration will regularly convene the winning bidder to sign the contract term or to accept or withdraw the equivalent instrument, within the term and under the conditions established in the bidding notice, under penalty of diminishing the right to contract, without prejudice to sanctions provided for in this Law.

§ 1 The notice period may be extended 1 (once) time, for an equal period, upon request by the party during its course, duly justified, and provided that the reason presented is accepted by the Administration.

§ 2 The Administration, when the convened party does not sign the contract term or does not accept or withdraw the equivalent instrument within the established term and conditions, shall be entitled to summon the remaining bidders, in the ranking order, to enter into the contract under the proposed conditions by the winning bidder.

§ 3 Once the validity period of the proposal indicated in the notice has elapsed without a call for contracting, the bidders will be released from the commitments assumed.

§ 4 In the event that none of the bidders accept the contract under the terms of § 2 of this article, the Administration, subject to the estimated value and its possible update pursuant to the notice, may:

I - summon the remaining bidders for negotiation, in the rank order, with a view to obtaining a better price, even if above the bidder's price;

II - award and celebrate the contract under the conditions offered by the remaining bidders, in compliance with the ranking order, when the negotiation of the best condition is frustrated.

§ 5 The unjustified refusal of the successful tenderer to sign the contract or to accept or withdraw the equivalent instrument within the period established by the Administration will characterize the total breach of the assumed obligation and will subject it to the legally established penalties and the immediate loss of the bid guarantee in favor of the agency or bidding entity.

§ 6 The rule in § 5 will not apply to the remaining bidders called pursuant to item I of § 4 of this article.

§ 7 The Administration shall be entitled to call other classified bidders to contract the remainder of the work, service or supply as a result of contract termination, subject to the same criteria established in §§ 2 and 4 of this article.

Art. 91. The contracts and their amendments will be in writing and will be attached to the process that gave rise to the contracting, disclosed and kept available to the public on an official website.

§ 1 The confidentiality of contracts and additional terms will be allowed when essential for the security of society and the State, under the terms of the legislation that regulates access to information.

§ 2º Contracts related to real rights over real estate shall be formalized by public deed drawn up in notary notes, the content of which must be disclosed and kept available to the public on an official website.

§ 3º The electronic form will be admitted in the execution of contracts and of additive terms, in compliance with the requirements foreseen in the regulation.

§ 4 Before formalizing or extending the term of the contract, the Administration must verify the tax compliance of the contracted party, consult the National Register of Disreputable and Suspended Companies (Ceis) and the National Register of Punished Companies (Cnep), issue the certificates denials of disrepute, impediment and labor debts and join them to the respective process.

Art. 92. Clauses that establish:

I - the object and its characteristic elements;

II - the link to the invitation to bid and to the proposal of the winning bidder or to the act that authorized the direct contracting and the respective proposal;

III - the legislation applicable to the execution of the contract, including as regards omitted cases;

IV - the execution regime or the form of supply;

V - the price and payment terms, criteria, base date and frequency of price readjustment and monetary restatement criteria between the date of performance of the obligations and the effective payment date;

VI - the criteria and frequency of measurement, when applicable, and the deadline for settlement and payment;

VII - the deadlines for the beginning of the execution, conclusion, delivery, observation and definitive receipt stages, when applicable;

VIII - the credit for which the expense will run, with the indication of the programmatic functional classification and the economic category;

IX - the risk matrix, when applicable;

X - the deadline for responding to the price renegotiation request, when applicable;

XI - the deadline for responding to the request for reestablishment of economic and financial balance, when applicable;

XII - the guarantees offered to ensure its full execution, when required, including those offered by the contractor in the event of advance payment of amounts;

XIII - the minimum guarantee period for the object, observing the minimum periods established in this Law and in the applicable technical standards, and the maintenance and technical assistance conditions, when applicable;

XIV - the rights and responsibilities of the parties, the applicable penalties and the amounts of the fines and their calculation bases;

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

XVI - the obligation of the contractor to maintain, throughout the performance of the contract, in compliance with the obligations assumed by him, all the conditions required for qualification in the bidding, or for qualification, in direct contracting;

XVII - the obligation of the contractor to comply with the requirements for the reservation of positions provided for by law, as well as other specific rules, for people with disabilities, for Social Security rehabilitated and for apprentices;

XVIII - the contract management model, subject to the requirements defined in the regulation;

XIX - the extinction cases.

§ 1 The contracts entered into by the Public Administration with individuals or legal entities, including those domiciled abroad, must contain a clause declaring the jurisdiction of the headquarters of the Administration competent to settle any contractual issue, except in the following cases:

I - international bidding for the acquisition of goods and services whose payment is made with the product of financing granted by an international financial organization of which Brazil is a part or by a foreign cooperation agency;

II - contracting with a foreign company for the purchase of equipment manufactured and delivered abroad, preceded by authorization from the Head of the Executive Branch;

III - acquisition of goods and services carried out by administrative units headquartered abroad.

§ 2 In accordance with the peculiarities of its object and execution regime, the contract will contain a clause providing for a period prior to the issuance of the service order for verification of pending issues, clearance of areas or adoption of other appropriate measures for the regularity of the beginning of its execution.

§ 3 Regardless of the duration, the contract must contain a clause establishing the price readjustment index, with a base date linked to the estimated budget date, and more than one specific or sectorial index may be established, in accordance with reality of the respective inputs.

§ 4 In continuous service contracts, observing the minimum period of 1 (one) year, the price readjustment criterion will be by:

I - readjustment in the strict sense, when there is no regime of exclusive dedication of labor or predominance of labor, by forecasting specific or sectorial indices;

II - renegotiation, when there is a regime of exclusive dedication of labor or predominance of labor, by means of an analytical demonstration of the variation in costs.

§ 5 In contracts for engineering works and services, whenever compatible with the execution regime, the measurement will be monthly.

§ 6 In contracts for continuous services with a regime of exclusive dedication of labor or with a predominance of labor, the deadline for responding to the price renegotiation request will preferably be 1 (one) month, counted from the date of supply of the documentation provided for in § 6 of art. 135 of this Law.

Art. 93. In the contracting of projects or specialized technical services, including those that contemplate the development of programs and internet applications for computers, machines, equipment and devices for processing and communicating information (software) - and the respective technical documentation associated -, the author must assign all property rights relating to them to the Public Administration, in which case they may be freely used and altered by it at other times, without the need for new authorization from the author.

§ 1 When the project refers to immaterial work of a technological nature, not subject to privilege, the assignment of rights referred to in the **caput of** this article shall include the provision of all data, documents and information elements relevant to the technology of conception, development , fixation on physical support of any nature and application of the work.

§ 2 The Public Administration may not require the assignment of rights referred to in the **caput of** this article when the object of the contract involves research and development of a scientific, technological or innovative nature, considering the principles and mechanisms established by the Law No. 10973, of December 2, 2004.

§ 3 In the event of subsequent alteration of the project by the Public Administration, the author must be notified, and the records will be promoted in the competent bodies or entities.

Art. 94. Disclosure on the National Public Contracting Portal (PNCP) is an indispensable condition for the effectiveness of the contract and its amendments and must occur within the following periods, counted from the date of its signature:

I - 20 (twenty) business days, in the case of bidding;

II - 10 (ten) business days, in the case of direct contracting.

§ 1 Contracts entered into in urgent cases will be effective as of their signature and must be published within the deadlines provided for in items I and II of the **caput of** this article, under penalty of nullity.

§ 2 The disclosure referred to in the **caput of** this article, when referring to the hiring of a professional in the artistic sector due to unenforceability, must identify the costs of the artist, musicians or band's fee, if any, of transport, accommodation, infrastructure , event logistics and other specific expenses.

§ 3 In the case of works, the Administration will disclose on an official website, within 25 (twenty-five) business days after signing the contract, the quantities and unit and total prices to be contracted and, within 45 (forty-five) ) working days after the conclusion of the contract, the quantities executed and the prices charged.

§ 4 (VETOED).

§ 5 (VETOED).

Art. 95. The contract instrument is mandatory, except in the following cases, in which the Administration may replace it with another capable instrument, such as a contract letter, expense commitment note, purchase authorization or service execution order:

I - waiver of bidding due to value;

II - purchases with immediate and full delivery of the acquired goods and which do not result in future obligations, including technical assistance, regardless of its value.

§ 1 In cases of replacement of the instrument of contract, the provisions of art. 92 of this Law.

§ 2 The verbal contract with the Administration is null and void, except for small purchases or the provision of prompt payment services, understood as those with a value not exceeding R$ 10,000.00 (ten thousand reais).

CHAPTER II

GUARANTEES

Art. 96. At the discretion of the competent authority, in each case, it may be required, as provided for in the notice, to provide a guarantee in the contracting of works, services and supplies.

§ 1 It will be up to the contractor to choose one of the following types of guarantee:

I - collateral in cash or in public debt securities issued in book-entry form, upon registration in a centralized settlement and custody system authorized by the Central Bank of Brazil, and valued at their economic values, as defined by the Ministry of Economy;

II - guarantee insurance;

III - bank guarantee issued by a bank or financial institution duly authorized to operate in the country by the Central Bank of Brazil.

§ 2 In the event of suspension of the contract by order or default by the Administration, the contracted party will not be obliged to renew the guarantee or to endorse the insurance policy until the order to restart the execution or the payment by the Administration.

§ 3 The notice shall set a minimum period of 1 (one) month, counted from the date of approval of the bid and prior to the signing of the contract, for the provision of the guarantee by the contractor when opting for the modality provided for in item II of § 1 of this article.

Art. 97. The guarantee insurance aims to ensure the faithful fulfillment of the obligations assumed by the contracted party to the Administration, including fines, losses and indemnities arising from default, observing the following rules in contracts governed by this Law:

I - the term of the policy will be equal to or greater than the term established in the main contract and must accompany the changes related to its validity through the issuance of the respective endorsement by the insurer;

II - the guarantee insurance will remain in force even if the contracted party has not paid the premium on the agreed dates.

Single paragraph. In contracts of continued performance or continuous supply of goods and services, the replacement of the guarantee insurance policy on the renewal or anniversary date will be allowed, provided that the same conditions and coverage of the current policy are maintained and as long as no period is overdrawn , except as provided for in § 2 of art. 96 of this Law.

Art. 98. In the contracting of works, services and supplies, the guarantee may be up to 5% (five percent) of the initial contract value, authorized to increase this percentage to up to 10% (ten percent), provided that it is justified through analysis of the technical complexity and the risks involved.

Single paragraph. In the contracting of services and continuous supplies with a term of more than 1 (one) year, as well as in subsequent extensions, the annual value of the contract will be used to define and apply the percentages provided for in the **caput of** this article.

Art. 99. In the contracting of large-scale engineering works and services, the provision of a guarantee may be required, in the guarantee-insurance modality, with a resumption clause provided for in art. 102 of this Law, in a percentage equivalent to up to 30% (thirty percent) of the initial contract value.

Art. 100. The guarantee provided by the contractor will be released or refunded after the faithful performance of the contract or after its extinction due to the exclusive fault of the Administration and, when in cash, monetarily restated.

Art. 101. In the cases of contracts that imply the delivery of goods by the Administration, of which the contractor will be a depositary, the value of these goods must be added to the value of the guarantee.

Art. 102. In the contracting of engineering works and services, the notice may require the provision of the guarantee in the guarantee-insurance modality and provide for the obligation of the insurer, in the event of default by the contractor, to assume the execution and complete the object of the contract , in which case:

I - the insurer shall sign the contract, including the amendments, as consenting intervening party and may:

a) have free access to the premises where the main contract is executed;

b) monitor the execution of the main contract;

c) have access to technical and accounting audits;

d) request clarification from the technical person responsible for the work or supply;

II - the issuance of commitment in the name of the insurer, or to whom it indicates for the conclusion of the contract, will be authorized provided that its fiscal regularity is demonstrated;

III - the insurer may subcontract the conclusion of the contract, in whole or in part.

Single paragraph. In the event of default by the contractor, the following provisions will be observed:

I - if the insurer executes and concludes the object of the contract, it will be exempt from the obligation to pay the insured amount indicated in the policy;

II - if the insurer does not assume the execution of the contract, it will pay the full amount of the insured amount indicated in the policy.

CHAPTER III

RISK ALLOCATION

Art. 103. The contract may identify the foreseen and presumed contractual risks and foresee a risk allocation matrix, allocating them between the contracting party and the contracted party, by indicating those to be assumed by the public sector or by the private sector or those to be shared.

§ 1 The risk allocation referred to in the **caput of** this article shall consider, in accordance with the obligations and charges attributed to the parties to the contract, the nature of the risk, the beneficiary of the benefits to which it is linked and the capacity of each sector to improve manage it.

§ 2 The risks covered by insurance companies will preferably be transferred to the contracted party.

§ 3 The allocation of contractual risks will be quantified for purposes of projecting the impact of their costs on the estimated contract value.

§ 4 The risk allocation matrix will define the initial economic and financial balance of the contract in relation to supervening events and must be observed in the resolution of any claims by the parties.

§ 5 Whenever the conditions of the contract and the risk allocation matrix are met, the economic and financial balance will be considered to be maintained, the parties waiving the requests to re-establish the balance related to the risks assumed, except as regards:

I - unilateral changes determined by the Administration, in the hypotheses of item I of the **caput** of art. 124 of this Law;

II - the increase or reduction, by supervening legislation, of taxes directly paid by the contractor as a result of the contract.

§ 6 In the allocation referred to in the **caput of** this article, methods and standards commonly used by public and private entities may be adopted, and the supervising ministries and secretariats of Public Administration bodies and entities may define the parameters and details of the necessary procedures its identification, allocation and financial quantification.

CHAPTER IV

ADMINISTRATION PREROGATIVES

Art. 104. The legal regime of contracts established by this Law confers on the Administration, in relation to them, the prerogatives of:

I - modify them, unilaterally, to better suit the purposes of public interest, respecting the rights of the contractor;

II - extinguish them, unilaterally, in the cases specified in this Law;

III - inspect its execution;

IV - apply sanctions motivated by total or partial non-execution of the adjustment;

V - provisionally occupy movable and immovable property and use personnel and services linked to the object of the contract in the event of:

a) risk to the provision of essential services;

b) need to ensure administrative verification of contractual defaults by the contractor, including after termination of the contract.

§ 1 The economic-financial and monetary clauses of the contracts cannot be changed without the contracted party's prior agreement.

§ 2 In the case provided for in item I of the **caput of** this article, the economic and financial clauses of the contract must be revised in order to maintain the contractual balance.

CHAPTER V

DURATION OF CONTRACTS

Art. 105. The duration of the contracts governed by this Law shall be as provided for in a notice, and the availability of budget credits, as well as the forecast in the multiannual plan, when exceeding 1 (one) financial year.

Art. 106. The Administration may enter into contracts with a term of up to 5 (five) years in the event of continuous services and supplies, subject to the following guidelines:

I - the competent authority of the contracting agency or entity shall attest to the greatest economic advantage envisioned as a result of the multiannual contracting;

II - the Administration must certify, at the beginning of the contracting and of each fiscal year, the existence of budget credits linked to the contracting and the advantage in maintaining them;

III - the Administration will have the option of terminating the contract, free of charge, when it does not have budget credits for its continuity or when it understands that the contract no longer offers it an advantage.

§ 1 The extinction mentioned in item III of the **caput of** this article will only occur on the next anniversary date of the contract and may not occur within a period of less than 2 (two) months, counted from that date.

§ 2 The provisions of this article apply to the rental of equipment and the use of computer programs.

Art. 107. The contracts for services and continuous supplies may be successively extended, subject to the maximum ten-year term, provided that there is a provision in the notice and that the competent authority certifies that the conditions and prices remain advantageous for the Administration, with negotiation with the contracted party or the termination of the contract at no cost to either party.

Art. 108. The Administration may enter into contracts with a term of up to 10 (ten) years in the cases provided for in items "f" and "g" of item IV and items V, VI, XII and XVI of the **main section** of art. 75 of this Law.

Art. 109. The Administration may establish the validity for an indefinite period in contracts in which it is a user of a public service offered under a monopoly regime, provided that the existence of budget credits linked to the contracting is proven in each financial year.

Art. 110. In contracting that generates revenue and in the efficiency contract that generates savings for the Administration, the terms will be:

I - up to 10 (ten) years, in contracts without investment;

II - up to 35 (thirty-five) years, in investment contracts, considered as those that imply the preparation of permanent improvements, carried out exclusively at the expense of the contracted party, which will be reverted to the assets of the Public Administration at the end of the contract.

Art. 111. In the contract that provides for the completion of a predefined scope, the term of validity will be automatically extended when its object is not completed within the period established in the contract.

Single paragraph. When non-completion is due to the contractor's fault:

I - the contracted party will be constituted in default, the respective administrative sanctions applicable to him;

II - the Administration may choose to terminate the contract and, in this case, will adopt the measures allowed by law for the continuity of the contractual performance.

Art. 112. The contractual terms provided for in this Law do not exclude or revoke the contractual terms provided for in a special law.

Art. 113. The contract signed under the regime of supply and provision of associated service will have its maximum term defined by the sum of the period relating to the initial supply or delivery of the work with the period relating to the operation and maintenance service, which is limited to 5 (five) years from the date of receipt of the initial object, with authorization for extension pursuant to art. 107 of this Law.

Article 114. The contract that provides for the continued operation of information technology structuring systems may have a maximum term of 15 (fifteen) years.

CHAPTER VI

PERFORMANCE OF CONTRACTS

Article 115. The contract must be faithfully executed by the parties, in accordance with the agreed clauses and the rules of this Law, and each party will be liable for the consequences of its total or partial non-performance.

§ 1 The Administration is prohibited from unreasonably delaying the execution of a work or service, or of its portions, even in the event of possession of the respective head of the Executive Power or of a new holder in the contracting agency or entity.

§ 2 (VETOED).

§ 3 (VETOED).

§ 4 (VETOED).

§ 5 In case of impediment, stoppage order or suspension of the contract, the execution schedule will be automatically extended for the corresponding time, such circumstances being noted in a simple handout.

§ 6 In the contracting of works, after verifying the occurrence of the provisions of § 5 of this article for more than 1 (one) month, the Administration shall disclose, on an official website and on a board to be affixed in a place of work that is easy to see by the citizens , public notice of the work stopped, with the reason and the person responsible for the temporary non-performance of the object of the contract and the date foreseen for the restart of its execution.

§ 7 The texts with the information referred to in § 6 of this article must be prepared by the Administration.

Art. 116. Throughout the performance of the contract, the contractor must comply with the reservation of positions provided for by law for people with disabilities, for Social Security rehabilitation or for apprentices, as well as the reservations of positions provided for in other specific rules.

Single paragraph. Whenever requested by the Administration, the contractor must prove compliance with the reservation of positions referred to in the **caput of** this article, with an indication of the employees who fill the aforementioned vacancies.

Art. 117. The execution of the contract must be monitored and inspected by 1 (one) or more contract inspectors, representatives of the Administration specially designated according to the requirements established in art. 7 of this Law, or by their respective substitutes, the hiring of third parties to assist and support them with information relevant to this assignment is permitted.

§ 1 The contract inspector will record in his own record all occurrences related to the execution of the contract, determining what is necessary to regularize the faults or defects observed.

§ 2 The contract supervisor will inform his superiors, in a timely manner for the adoption of the appropriate measures, of the situation that requires a decision or measure that goes beyond his competence.

§ 3 The contract inspector will be assisted by the legal advisory and internal control bodies of the Administration, which shall resolve doubts and support him with relevant information to prevent risks in the contract execution.

§ 4 In the event of hiring third parties provided for in the **caput of** this article, the following rules must be observed:

I - the company or the professional hired will assume strict civil liability for the veracity and accuracy of the information provided, will sign a confidentiality agreement and will not be able to exercise its own exclusive attribution of contract inspector;

II - the contracting of third parties will not exempt the contract inspector from responsibility, within the limits of the information received from the contracted third party.

Art. 118. The contractor must maintain an agent accepted by the Administration at the work or service site to represent him in the performance of the contract.

Art. 119. The contractor will be obliged to repair, correct, remove, rebuild or replace, at its own expense, in whole or in part, the object of the contract in which there are defects, defects or inaccuracies resulting from its execution or materials therein employees.

Art. 120. The contractor will be liable for damages caused directly to the Administration or third parties as a result of the performance of the contract, and will not exclude or reduce this responsibility to inspection or monitoring by the contracting party.

Art. 121. Only the contractor will be responsible for the labor, social security, tax and commercial charges resulting from the performance of the contract.

§ 1 The contractor's default in relation to labor, tax and commercial charges shall not transfer the responsibility for their payment to the Administration and may not encumber the object of the contract or restrict the regularization and use of the works and buildings, including before the registration of properties, except in the case provided for in § 2 of this article.

§ 2 Exclusively in the contracting of continuous services with a regime of exclusive dedication of labor, the Administration will be jointly and severally liable for social security charges and alternatively for labor charges if proven failure to monitor compliance with the contracted party's obligations.

§ 3 In the contracting of continuous services with a regime of exclusive dedication of labor, to ensure compliance with labor obligations by the contractor, the Administration, upon provision in a notice or contract, may, among other measures:

I - require a bond, bank guarantee or contracting of guarantee insurance with coverage for defaulted severance payments;

II - make payment conditional on proof of settlement of overdue labor obligations related to the contract;

III - make the deposit of amounts in an escrow account;

IV - in case of default, directly pay the labor sums, which will be deducted from the payment due to the contractor;

V - to establish that the amounts allocated to vacations, thirteenth salary, legal absences and severance pay of the contractor's employees who participate in the execution of the contracted services will be paid by the contracting party to the contracted party only in the event of the triggering event.

§ 4 § 4 The amounts deposited in the linked account referred to in item III of § 3 of this article are absolutely unseizable.

§ 5 The payment of social security contributions shall comply with the provisions of art. 31 of Law No. 8,212 of July 24, 1991.

Art. 122. In carrying out the contract and without prejudice to contractual and legal responsibilities, the contractor may subcontract parts of the work, service or supply up to the limit authorized, in each case, by the Administration.

§ 1 The contractor will submit to the Administration documentation that proves the technical capacity of the subcontractor, which will be evaluated and attached to the corresponding process records.

§ 2º Regulation or bidding notice may prohibit, restrict or establish conditions for subcontracting.

§ 3 The subcontracting of an individual or legal entity shall be prohibited, if that person or its managers maintain a technical, commercial, economic, financial, labor or civil relationship with a manager of the contracting agency or entity or with a public agent who plays a role in the bidding or act in the supervision or management of the contract, or if they are a spouse, partner or relative in a straight line, collateral, or by affinity, up to the third degree, and this prohibition must be expressly included in the bidding notice.

Art. 123. The Administration will have the duty to explicitly issue a decision on all requests and complaints related to the performance of contracts governed by this Law, except for requests that are manifestly impertinent, merely delaying or of no interest for the proper performance of the contract.

Single paragraph. Unless a legal provision or a contractual clause establishes a specific term, once the application has been processed, the Administration will have a period of 1 (one) month to decide, allowing for an extension for an equal period.

CHAPTER VII

AMENDMENT OF CONTRACTS AND PRICES

Article 124. The contracts governed by this Law may be amended, with due justification, in the following cases:

I - unilaterally by the Administration:

a) when there is a modification of the project or specifications, for better technical adequacy to its objectives;

b) when it is necessary to change the contractual value as a result of a quantitative increase or decrease of its object, within the limits allowed by this Law;

II - by agreement between the parties:

a) when it is convenient to replace the performance guarantee;

b) when it is necessary to change the regime for the execution of the work or service, as well as the mode of supply, in view of the technical verification of the inapplicability of the original contractual terms;

c) when it is necessary to change the form of payment due to imposition of supervening circumstances, keeping the initial amount updated and the advance payment in relation to the established financial schedule is prohibited without the corresponding consideration for the supply of goods or execution of work or service;

d) to re-establish the initial economic and financial balance of the contract in case of force majeure, fortuitous event or fact of the prince or as a result of unpredictable or foreseeable facts of incalculable consequences, which make it impossible to perform the contract as agreed, respected, in any in this case, the objective allocation of risk established in the contract.

§ 1 If they are due to project failures, changes to contracts for works and engineering services will give rise to the determination of the responsibility of the technical responsible and the adoption of the necessary measures to reimburse the damages caused to the Administration.

§ 2 The provisions of item "d" of item II of the **caput of** this article shall apply to the contracting of engineering works and services, when the execution is impeded by the delay in the completion of expropriation, eviction, administrative easement or environmental licensing procedures, by circumstances outside the contractor.

Art. 125. In the unilateral changes referred to in item I of the **main section** of art. 124 of this Law, the contractor will be obliged to accept, under the same contractual conditions, additions or deletions of up to 25% (twenty-five percent) of the updated initial value of the contract that are made in the works, services or purchases, and, in the case of building or equipment renovation, the limit for additions will be 50% (fifty percent).

Art. 126. The unilateral changes referred to in item I of the **main section** of art. 124 of this Law may not transfigure the object of the contract.

Art. 127. If the contract does not include unit prices for works or services whose addition is necessary, these will be fixed by applying the general relationship between the values ​​of the proposal and the base budget of the Administration on the reference or market in force on the date of the amendment, respecting the limits established in art. 125 of this Law.

Art. 128. In the contracting of engineering works and services, the percentage difference between the global value of the contract and the global reference price cannot be reduced in favor of the contractor as a result of amendments that modify the budget spreadsheet.

Art. 129. In contractual amendments to suppress works, goods or services, if the contractor has already acquired the materials and placed them at the work site, these must be paid by the Administration for the acquisition costs regularly verified and monetarily adjusted, which may be applicable indemnity for other damages that may result from the suppression, provided that they are regularly proven.

Art. 130. If there is a unilateral amendment to the contract that increases or decreases the contracted party's charges, the Administration shall re-establish, in the same addendum, the initial economic-financial balance.

Art. 131. The termination of the contract will not constitute an obstacle to the recognition of the economic and financial imbalance, in which case indemnity will be granted through an indemnity term.

Single paragraph. The request for reestablishment of the economic and financial balance must be made during the term of the contract and before any extension under the terms of art. 107 of this Law.

Article 132. The formalization of the addendum is a condition for the performance, by the contractor, of the services determined by the Administration in the course of the execution of the contract, except in cases of justified need to anticipate its effects, in which case the formalization must occur in the maximum term of 1 (one) month.

Art. 133.In cases where integrated or semi-integrated contracting is adopted, the change of contractual values ​​is prohibited, except in the following cases:

I - to re-establish the economic and financial balance arising from acts of God or force majeure;

II - due to the need to change the project or specifications for better technical adequacy to the contracting objectives, at the request of the Administration, provided that they do not result from errors or omissions on the part of the contractor, observing the limits established in art. 125 of this Law;

III - due to the need to change the project in semi-integrated contracts, pursuant to § 5 of art. 46 of this Law;

IV - due to the occurrence of a supervening event allocated in the risk matrix as the responsibility of Management.

Art. 134. The contracted prices will be changed, upwards or downwards, as the case may be, if any, after the date of submission of the proposal, creation, alteration or extinction of any taxes or legal charges or the supervenience of legal provisions, with proven impact on contracted prices.

Art. 135.The prices of contracts for continuous services with a regime of exclusive dedication of labor or with a predominance of labor will be renegotiated to maintain the economic and financial balance, through an analytical demonstration of the variation of contractual costs, with a binding date:

I - for the presentation of the proposal, for costs arising from the market;

II - the agreement, collective agreement or collective bargaining to which the proposal is linked, for labor costs.

§ 1 The Administration shall not be bound by the provisions contained in agreements, conventions or collective bargaining agreements dealing with non-labor matters, payment of workers' participation in the contractor's profits or results, or that establish rights not provided for by law, such as values or mandatory indices of social or social security charges, as well as prices for inputs related to the exercise of the activity.

§ 2º It is forbidden for a contracting body or entity to be bound by the provisions set forth in agreements, conventions or collective bargaining agreements dealing with obligations and rights that only apply to contracts with the Public Administration.

§ 3 The renegotiation must observe the minimum period of 1 (one) year, counted from the date of submission of the proposal or from the date of the last renegotiation.

§ 4 The renegotiation may be divided into as many installments as necessary, observing the principle of annuality of the contract price adjustment, and may be carried out at different times to discuss the variation of costs that have their annuality resulting in different dates, such as those arising from of labor and those resulting from the inputs necessary for the execution of the services.

§ 5 When the hiring involves more than one professional category, the renegotiation referred to in item II of the **caput of** this article may be divided into as many as the collective bargaining agreements, conventions or collective bargaining of the categories involved in the hiring.

§ 6 The renegotiation will be preceded by a request by the contractor, accompanied by an analytical demonstration of the variation in costs, by means of the presentation of the cost and pricing worksheet, or the new agreement, convention or normative sentence underlying the renegotiation.

Art. 136. Records that do not characterize an amendment to the contract can be made by simple handout, exempting the execution of an amendment, as in the following situations:

I - variation of the contractual value to face the readjustment or renegotiation of prices provided for in the contract itself;

II - updates, compensation or financial penalties arising from the payment conditions provided for in the contract;

III - changes in the name or corporate name of the contractor;

IV - commitment of budget allocations.

CHAPTER VIII

HYPOTHESES OF CONTRACT TERMINATION

Art. 137. The following situations will constitute reasons for the termination of the contract, which must be formally motivated in the case records, provided for the adversary proceeding and full defense:

I - non-compliance or irregular compliance with notices or contractual clauses, specifications, projects or deadlines;

II - failure to comply with the regular orders issued by the authority designated to monitor and inspect their execution or by a higher authority;

III - social change or modification of the purpose or structure of the company that restricts its ability to complete the contract;

IV - decree of bankruptcy or civil insolvency, dissolution of the company or the death of the contractor;

V - Act of God or force majeure, regularly proven, impeding the performance of the contract;

VI - delay in obtaining the environmental license, or impossibility of obtaining it, or substantial alteration of the preliminary project that results from it, even if obtained within the prescribed period;

VII - delay in the release of areas subject to expropriation, eviction or administrative easement, or impossibility of releasing these areas;

VIII - reasons of public interest, justified by the highest authority of the contracting body or entity;

IX - non-compliance with obligations related to the reservation of positions provided for by law, as well as other specific rules, for people with disabilities, for social security rehabilitation or for apprentices.

§ 1º Regulation may specify procedures and criteria for verifying the occurrence of the reasons provided for in the **caput of** this article.

§ 2 The contractor will be entitled to terminate the contract in the following cases:

I - suppression, by the Administration, of works, services or purchases that entail modification of the initial contract value beyond the limit allowed in art. 125 of this Law;

II - suspension of execution of the contract, by written order of the Administration, for a period exceeding 3 (three) months;

III - repeated suspensions totaling 90 (ninety) business days, regardless of the mandatory payment of indemnity for successive and contractually unforeseen demobilizations and mobilizations and others foreseen;

IV - delay exceeding 2 (two) months, counted from the issuance of the invoice, payments or installments of payments due by the Administration for expenses of works, services or supplies;

V - non-release by the Administration, within the contractual terms, of the area, place or object, for the execution of work, service or supply, and of natural material sources specified in the project, including due to delay or non-compliance with the obligations assigned by the contract to the Administration related to expropriation, vacancy of public areas or environmental licensing.

§ 3 The cases of extinction referred to in items II, III and IV of § 2 of this article shall observe the following provisions:

I - will not be admitted in case of public calamity, serious disturbance of the internal order or war, as well as when they result from an act or fact that the contractor has practiced, in which he has participated or to which he has contributed;

II - shall ensure the contracted party the right to opt for the suspension of the performance of the obligations assumed until the situation is normalized, assuming the reestablishment of the economic and financial balance of the contract, pursuant to item "d" of item II of the **caput** of art. 124 of this Law.

§ 4 The issuers of the guarantees provided for in art. 96 of this Law must be notified by the contracting party regarding the beginning of the administrative process to determine non-compliance with contractual clauses.

Art. 138. The termination of the contract may be:

I - determined by unilateral and written act of the Administration, except in the case of non-compliance resulting from its own conduct;

II - consensual, by agreement between the parties, by conciliation, by mediation or by a dispute resolution committee, provided that there is an interest of the Administration;

III - determined by arbitration decision, as a result of an arbitration clause or arbitration commitment, or by court decision.

§ 1 The extinction determined by unilateral act of the Administration and the consensual extinction must be preceded by written and reasoned authorization from the competent authority and reduced to term in the respective process.

§ 2 When the extinction results from the exclusive fault of the Administration, the contractor will be compensated for the regularly proven damages he has suffered and will be entitled to:

I - warranty return;

II - payments due for the execution of the contract until the date of termination;

III - payment of the cost of demobilization.

Art. 139. The extinction determined by a 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, in the state and place in which it is found, by the Administration's own act;

II - occupation and use of the premises, facilities, equipment, material and personnel employed in the execution of the contract and necessary for its continuity;

III - execution of the contractual guarantee for:

a) compensation to the Public Administration for damages arising from non-execution;

b) payment of labor, land and social security amounts, when applicable;

c) payment of fines due to the Public Administration;

d) requirement for the insurer to assume the execution and completion of the object of the contract, when applicable;

IV - retention of credits arising from the contract up to the limit of damages caused to the Public Administration and fines applied.

§ 1 The application of the measures provided for in items I and II of the **caput of** this article will be at the discretion of the Administration, which may continue the work or service by direct or indirect execution.

§ 2 In the event of item II of the **caput of** this article, the act must be preceded by the express authorization of the Minister of State, the State Secretary or the competent municipal secretary, as the case may be.

CHAPTER IX

RECEIPT OF THE PURPOSE OF THE CONTRACT

Art. 140. The object of the contract will be received:

I - in the case of works and services:

a) provisionally, by the person responsible for monitoring and inspecting it, through a detailed term, when compliance with technical requirements is verified;

b) definitively, by a server or commission appointed by the competent authority, through a detailed term that proves compliance with the contractual requirements;

II - when it comes to purchases:

a) provisionally, in summary form, by the person responsible for monitoring and inspecting it, with subsequent verification of the material's compliance with contractual requirements;

b) definitively, by a server or commission appointed by the competent authority, through a detailed term that proves compliance with the contractual requirements.

§ 1 The object of the contract may be rejected, in whole or in part, when it is in disagreement with the contract.

§ 2 Provisional or definitive receipt shall not exclude civil liability for the solidity and safety of the work or service, nor ethical-professional responsibility for the perfect performance of the contract, within the limits established by law or by the contract.

§ 3 The deadlines and methods for carrying out provisional and definitive receipts will be defined in a regulation or in the contract.

§ 4 Unless otherwise stated in the notice or normative act, the tests, tests and other evidence to assess the good performance of the object of the contract required by official technical standards will be borne by the contractor.

§ 5 In the case of a work project, the final receipt by the Administration will not exempt the designer or consultant from strict liability for all damages caused by project failure.

§ 6 In the case of a work, the final receipt by the Administration will not exempt the contractor, for a minimum period of 5 (five) years, assuming the provision of a superior guarantee period in the notice and in the contract, from objective responsibility for soundness and safety of the materials and services performed and for the functionality of the construction, renovation, recovery or expansion of the immovable property, and, in case of defect, defect or inaccuracy identified, the contractor will be responsible for the repair, correction, reconstruction or necessary replacement.

CHAPTER X

PAYMENTS

Art. 141. In the duty of payment by the Administration, the chronological order will be observed for each differentiated source of resources, subdivided into the following categories of contracts:

I - supply of goods;

II - locations;

III - provision of services;

IV - carrying out works.

§ 1 The chronological order referred to in the **caput of** this article may be changed, upon prior justification by the competent authority and subsequent communication to the internal control body of the Administration and to the competent court of auditors, exclusively in the following situations:

I - serious disturbance of order, emergency situation or public calamity;

II - payment to microenterprise, small business, family farmer, individual rural producer, individual microentrepreneur and cooperative society, provided that the risk of discontinuing the fulfillment of the object of the contract is demonstrated;

III - payment for services necessary for the operation of the structuring systems, provided that the risk of discontinuing the fulfillment of the object of the contract is demonstrated;

IV - payment of rights arising from contracts in the event of bankruptcy, judicial recovery or dissolution of the contracted company;

V - payment of a contract whose object is essential to ensure the integrity of the public property or to maintain the functioning of the final activities of the body or entity, when the risk of discontinuity in the provision of a relevant public service or the fulfillment of the institutional mission is demonstrated.

§ 2 Failure to comply with the chronological order referred to in the **caput of** this article will give rise to the determination of the responsibility of the responsible agent, and the control bodies are responsible for its inspection.

§ 3 The body or entity shall make available, on a monthly basis, in a specific section for access to information on its website, the chronological order of its payments, as well as the justifications that substantiate any change in this order.

Article 142. Express provision in the notice or in the contract may provide for payment in an escrow account or payment for the effective proof of the triggering event.

Single paragraph. (VETOED).

Art. 143. In case of dispute over the execution of the object, regarding the dimension, quality and quantity, the uncontroversial installment must be released within the period foreseen for payment.

Article 144.When contracting works, supplies and services, including engineering, variable remuneration linked to the performance of the contractor may be established, based on goals, quality standards, environmental sustainability criteria and delivery terms defined in the bidding notice and in the contract.

§ 1 Payment may be adjusted on a percentage basis on the amount saved in a given expense, when the object of the contract is to implement a rationalization process, in which case the expenses will be charged to the same budget credits, in the form of specific regulation.

§ 2 The use of variable remuneration will be motivated and will respect the budget limit set by the Administration for hiring.

Art. 145.Prepayment, partial or total, related to contractual installments linked to the supply of goods, the execution of works or the provision of services will not be allowed.

§ 1 The advance payment will only be allowed if it provides a significant saving of resources or if it represents an indispensable condition for obtaining the good or for the provision of the service, a hypothesis that must be previously justified in the bidding process and expressly provided for in the bidding notice or instrument formal direct contracting.

§ 2 The Administration may require the provision of an additional guarantee as a condition for advance payment.

§ 3 If the object is not executed within the contractual term, the anticipated value must be returned.

Art. 146.In the act of settlement of the expense, the accounting services will communicate to the tax administration bodies the characteristics of the expense and the amounts paid, pursuant to the provisions of art. 63 of Law No. 4,320, of March 17, 1964.

CHAPTER XI

NULLITY OF CONTRACTS

Art. 147. If an irregularity is found in the bidding procedure or in the contractual performance, if it is not possible to reorganize the contract, the decision on the suspension of the performance or on the declaration of nullity of the contract will only be adopted in the event that a measure of public interest is revealed, with evaluation, among others, of the following aspects:

I - economic and financial impacts arising from the delay in enjoying the benefits of the object of the contract;

II - social, environmental and safety risks for the local population arising from the delay in enjoying the benefits of the object of the contract;

III - social and environmental motivation of the contract;

IV - cost of deterioration or loss of executed parcels;

V - expenses necessary for the preservation of facilities and services already performed;

VI - expense inherent to demobilization and subsequent return to activities;

VII - measures effectively adopted by the head of the body or entity to remedy the signs of irregularities pointed out;

VIII - total cost and stage of physical and financial execution of the contracts, agreements, works or parcels involved;

IX - closure of direct and indirect jobs due to the stoppage;

X - cost for carrying out a new bid or entering into a new contract;

XI - opportunity cost of capital during the shutdown period.

Single paragraph. If the stoppage or cancellation does not prove to be a measure of public interest, the public authority must opt ​​for the continuity of the contract and for the solution of the irregularity through indemnification for damages, without prejudice to the determination of responsibility and the application of applicable penalties.

Art. 148. The declaration of nullity of the administrative contract will require prior analysis of the public interest involved, pursuant to art. 147 of this Law, and will operate retroactively, preventing the legal effects that the contract should ordinarily produce and deconstituting those already produced.

§ 1 If it is not possible to return to the previous factual situation, the nullity will be resolved by indemnity for damages, without prejudice to the determination of responsibility and application of the applicable penalties.

§ 2 When declaring the contract null and void, the authority, with a view to continuing the administrative activity, may decide that it will only be effective at a future time, sufficient to carry out a new contract, for a period of up to 6 (six) months, extendable to a single turn.

Art. 149. The nullity will not exonerate the Administration from the duty to indemnify the contractor for what it has performed until the date it is declared or made effective, as well as for other regularly proven damages, provided that it is not attributable to it, and will be promoted to accountability of those who gave it cause.

Art. 150. No contract will be made without the proper characterization of its object and without the indication of budget credits for payment of contractual installments falling due in the year in which the contract is made, under penalty of nullity of the act and liability of whoever has it given cause.

CHAPTER XII

ALTERNATIVE MEANS OF RESOLVING DISPUTES

Art. 151. In contracts governed by this Law, alternative means of prevention and dispute resolution may be used, notably conciliation, mediation, the dispute resolution committee and arbitration.

Single paragraph. The provisions of the **caput of** this article will be applied to disputes related to available property rights, such as issues related to the reestablishment of the economic and financial balance of the contract, default of contractual obligations by any of the parties and the calculation of indemnities.

Art. 152. Arbitration will always be by law and will observe the principle of publicity.

Art. 153. Contracts may be amended to allow for the adoption of alternative means of dispute resolution.

Article 154.The process of choosing arbitrators, arbitration boards and dispute resolution committees will observe equal, technical and transparent criteria.

TITLE IV

IRREGULARITIES

CHAPTER I

OFFENSES AND ADMINISTRATIVE SANCTIONS

Article 155.The bidder or the contractor will be administratively liable for the following infractions:

I - give rise to partial non-performance of the contract;

II - cause the partial non-performance of the contract that causes serious damage to the Administration, to the functioning of public services or to the collective interest;

III - give cause for the total non-performance of the contract;

IV - failing to deliver the documentation required for the event;

V - not keep the proposal, except as a result of a duly justified supervening fact;

VI - not entering into the contract or not delivering the documentation required for the contract, when called within the validity period of its proposal;

VII - giving rise to the delay in the execution or delivery of the object of the bidding without justified reason;

VIII - submit a false statement or documentation required for the event or provide a false statement during the bidding process or performance of the contract;

IX - defraud the bid or perform a fraudulent act in the performance of the contract;

X - behave in an inappropriate manner or commit fraud of any kind;

XI - perform unlawful acts with a view to frustrating the bidding objectives;

XII - perform a harmful act provided for in art. 5 of Law No. 12,846, of August 1, 2013.

Art. 156. The following sanctions will be applied to the person responsible for administrative infractions provided for in this Law:

I - warning;

II - fine;

III - impediment to bid and contract;

IV - declaration of unfitness to bid or contract.

§ 1 In the application of sanctions, the following shall be considered:

I - the nature and seriousness of the offense committed;

II - the peculiarities of the specific case;

III - aggravating or mitigating circumstances;

IV - damages arising from it for the Public Administration;

V - the implementation or improvement of the integrity program, according to the rules and guidelines of the control bodies.

§ 2 The sanction provided for in item I of the **main** section of this article shall be applied exclusively for the administrative infraction provided for in item I of the **main section** of art. 155 of this Law, when the imposition of a more severe penalty is not justified.

§ 3 The sanction provided for in item II of the **caput of** this article, calculated in the form of the notice or contract, may not be less than 0.5% (five tenths percent) or more than 30% (thirty percent) of the value of the contract bid or entered into with direct contracting and will be applied to the person responsible for any of the administrative infractions provided for in art. 155 of this Law.

§ 4 The sanction provided for in item III of the **main** section of this article shall be applied to the person responsible for the administrative infractions provided for in items II, III, IV, V, VI and VII of the **main section** of art. 155 of this Law, when the imposition of a more severe penalty is not justified, and shall prevent the person responsible from bidding or contracting within the direct and indirect Public Administration of the federative entity that has applied the sanction, for a maximum period of 3 (three) years.

§ 5 The sanction provided for in item IV of the **main** section of this article shall be applied to the person responsible for administrative infractions provided for in items VIII, IX, X, XI and XII of the **main section** of art. 155 of this Law, as well as for the administrative infractions provided for in items II, III, IV, V, VI and VII of the **caput** of said article that justify the imposition of a more serious penalty than the sanction referred to in § 4 of this article, and shall prevent the responsible to bid or contract within the scope of the direct and indirect Public Administration of all federative entities, for a minimum period of 3 (three) years and a maximum of 6 (six) years.

§ 6 The sanction established in item IV of the **caput of** this article shall be preceded by legal analysis and shall observe the following rules:

I - when applied by an agency of the Executive Power, it will be the exclusive responsibility of the Minister of State, State Secretary or Municipal Secretary and, when applied by an autarchy or foundation, it will be the exclusive responsibility of the highest authority of the entity;

II - when applied by bodies of the Legislative and Judiciary Powers, the Public Prosecutor's Office and the Public Defender's Office in the performance of the administrative function, it will be the exclusive competence of an authority with a hierarchical level equivalent to the authorities referred to in item I of this paragraph, in the form of a regulation.

§ 7 The sanctions provided for in items I, III and IV of the **main section of** this article may be applied cumulatively with those provided for in item II of the **main** section of this article.

§ 8 If the fine applied and the applicable indemnities are higher than the payment amount eventually owed by the Administration to the contractor, in addition to the loss of this amount, the difference will be deducted from the guarantee provided or will be charged in court.

§ 9 The application of the sanctions provided for in the **caput of** this article does not exclude, under any circumstances, the obligation to fully repair the damage caused to the Public Administration.

Art. 157. In the application of the sanction provided for in item II of the **caput** of art. 156 of this Law, the interested party will be able to defend it within 15 (fifteen) business days, counting from the date of its summons.

Art. 158. The application of the sanctions provided for in items III and IV of the **caput** of art. 156 of this Law will require the initiation of a liability process, to be conducted by a committee composed of 2 (two) or more stable employees, which will evaluate known facts and circumstances and will summon the bidder or the contractor for, within 15 (fifteen) days useful, from the date of the subpoena, present a written defense and specify the evidence you intend to produce.

§ 1 In a Public Administration body or entity whose staff is not made up of statutory employees, the committee referred to in the **caput of** this article shall be composed of 2 (two) or more public employees belonging to its permanent staff, preferably with, in the minimum, 3 (three) years of service in the agency or entity.

§ 2 In the event of approval of a request for the production of new evidence or addition of evidence deemed indispensable by the commission, the bidder or the contractor may present final allegations within 15 (fifteen) business days, counting from the date of the summons.

§ 3º Will be rejected by the committee, by reasoned decision, illicit, impertinent, unnecessary, delaying or untimely evidence.

§ 4 The prescription will occur in 5 (five) years, counted from the knowledge of the infraction by the Administration, and will be:

I - interrupted by the opening of the liability process referred to in the **caput 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 makes the completion of the administrative calculation unfeasible.

Art. 159. The acts provided for as administrative infractions in this Law or in other laws of public administration tenders and contracts that are also typified as harmful acts in Law No. 12,846, of August 1, 2013, will be investigated and judged jointly, in the same records, subject to the procedural rite and the competent authority defined in said Law.

Single paragraph. (VETOED).

Art. 160. The legal personality may be disregarded whenever used with abuse of law to facilitate, cover up or disguise the practice of unlawful acts provided for in this Law or to cause confusion of assets, and, in this case, all the effects of the sanctions applied to the person legal entity shall be extended to its administrators and partners with administrative powers, the successor legal entity or company in the same field with a relationship of coalition or control, in fact or in law, with the sanctioned party, observing, in all cases, the contradictory, the broad defense and the obligation of prior legal analysis.

Art. 161. The bodies and entities of the Executive, Legislative and Judiciary Powers of all federative entities shall, within a maximum period of 15 (fifteen) business days, counted from the date of application of the sanction, inform and keep up to date the data related to the sanctions for they are applied, for advertising purposes, in the National Register of Disreputable and Suspended Companies (Ceis) and in the National Register of Punished Companies (Cnep), established within the scope of the federal Executive Branch.

Single paragraph. For the purposes of applying the sanctions provided for in items I, II, III and IV of the **main section** of art. 156 of this Law, the Executive Branch will regulate the form of calculation and the consequences of the sum of different sanctions applied to the same company and derived from different contracts.

Art. 162. Unjustified delays in the execution of the contract will subject the contracted party to a late payment fine, as provided for in the notice or contract.

Single paragraph. The application of a late payment fine will not prevent the Administration from converting it into a compensatory one and promoting the unilateral termination of the contract with the cumulative application of other sanctions provided for in this Law.

Art. 163. The rehabilitation of the bidder or contractor is allowed before the authority that applied the penalty, cumulatively required:

I - full reparation for the damage caused to the Public Administration;

II - payment of the fine;

III - expiry of the minimum period of 1 (one) year for the application of the penalty, in the case of impediment to bid and contract, or of 3 (three) years for the application of the penalty, in the case of declaration of disrepute;

IV - compliance with the rehabilitation conditions defined in the punitive act;

V - prior legal analysis, with a conclusive position regarding compliance with the requirements defined in this article.

Single paragraph. The sanction for the infractions provided for in items VIII and XII of the **caput** of art. 155 of this Law will require, as a condition of rehabilitation of the bidder or contractor, the implementation or improvement of an integrity program by the person responsible.

CHAPTER II

RESPONSES, REQUESTS FOR CLARIFICATION AND RESOURCES

Art. 164. Any person is a legitimate party to challenge the bidding notice for irregularity in the application of this Law or to request clarification on its terms, and must file the request up to 3 (three) business days before the opening date of the event.

Single paragraph. The response to the objection or to the request for clarification will be published on an official website within a period of up to 3 (three) business days, limited to the last business day prior to the opening date of the event.

Art. 165. The acts of the Administration arising from the application of this Law include:

I - appeal, within 3 (three) business days, counted from the date of summons or drafting of the minutes, in view of:

a) act that grants or rejects a request for pre-qualification of interested parties or for registration in a cadastral register, its alteration or cancellation;

b) judgment of the proposals;

c) act of qualification or disqualification of the bidder;

d) cancellation or revocation of the bid;

e) termination of the contract, when determined by unilateral written act of the Administration;

II - request for reconsideration, within a period of 3 (three) business days, counted from the date of summons, in relation to an act for which hierarchical appeal is not possible.

§ 1 Regarding the appeal filed pursuant to the provisions of items "b" and "c" of item I of the **caput of** this article, the following provisions shall be observed:

I - the intention to appeal must be manifested immediately, under penalty of estoppel, and the deadline for presentation of the appeal reasons provided for in item I of the **caput of** this article shall start on the date of the summons or of the drawing up of the qualification or disqualification minutes or, on the hypothesis of adoption of the phase inversion provided for in § 1 of art. 17 of this Law, of the judgment minutes;

II - the appraisal will take place in a single phase.

§ 2 The appeal referred to in item I of the **caput of** this article shall be addressed to the authority that edited the act or rendered the appealed decision, which, if it does not reconsider the act or decision within 3 (three) business days, will forward the appeal with its motivation to the higher authority, which must render its decision within a maximum period of 10 (ten) business days, counting from the receipt of the records.

§ 3 The acceptance of the appeal will imply invalidation only of an act that cannot be used.

§ 4 The deadline for submitting counterarguments will be the same as for the appeal and will start on the date of the personal summons or disclosure of the filing of the appeal.

§ 5 The bidder will be assured of the elements essential to the defense of its interests.

Art. 166. The application of the sanctions provided for in items I, II and III of the **caput** of art. 156 of this Law may be appealed within a period of 15 (fifteen) business days, counted from the date of the summons.

Single paragraph. The appeal referred to in the **caput of** this article will be addressed to the authority that rendered the appealed decision, which, if not reconsidered within 5 (five) business days, will forward the appeal with its motivation to the higher authority, which shall deliver its decision within a maximum period of 20 (twenty) business days, counting from the receipt of the records.

Art. 167. The application of the sanction provided for in item IV of the **caput** of art. 156 of this Law, only a request for reconsideration shall apply, which must be submitted within 15 (fifteen) business days, counted from the date of the summons, and decided within a maximum period of 20 (twenty) business days, counted from its receipt.

Art. 168. The appeal and the request for reconsideration shall suspend the appealed act or decision until a final decision is reached by the competent authority.

Single paragraph. In preparing its decisions, the competent authority will be assisted by the legal advisory body, which will have to resolve doubts and support it with the necessary information.

CHAPTER III

CONTRACTING CONTROL

Art. 169. Public contracts shall be subject to continuous and permanent practices of risk management and preventive control, including through the adoption of information technology resources, and, in addition to being subordinate to social control, they shall be subject to to the following lines of defense:

I - first line of defense, made up of public servants and employees, bidding agents and authorities that act in the governance structure of the body or entity;

II - second line of defense, comprising the legal advisory and internal control units of the body or entity itself;

III - third line of defense, comprising the central internal control body of the Administration and the court of auditors.

§ 1 In the form of a regulation, the implementation of the practices referred to in the **caput of** this article will be the responsibility of the senior management of the body or entity and will take into account the costs and benefits arising from its implementation, opting for measures that promote integrity and trustworthy relationships, with legal certainty for all involved, and that produce the most advantageous result for the Administration, with efficiency, effectiveness and effectiveness in public contracts.

§ 2 In order to carry out their activities, the control bodies must have unrestricted access to the documents and information necessary to carry out the work, including documents classified by the body or entity pursuant to Law No. 12,527, of November 18, 2011, and the control body with which any confidential information was shared will become co-responsible for maintaining its confidentiality.

§ 3 The members of the lines of defense referred to in items I, II and III of the **caput of** this article shall observe the following:

I - when they find simple formal impropriety, they will adopt measures to clean it up and to mitigate the risks of its new occurrence, preferably with the improvement of preventive controls and the training of responsible public agents;

II - when they find an irregularity that constitutes damage to the Administration, without prejudice to the measures provided for in item I of this § 3, they shall adopt the necessary measures for the investigation of administrative infractions, observing the segregation of functions and the need for individualization of conduct, as well as sending to the competent Public Prosecutor's Office copies of the documents applicable to the investigation of the offenses within its competence.

Art. 170. The control bodies will adopt, in the inspection of the acts provided for in this Law, criteria of opportunity, materiality, relevance and risk and will consider the reasons presented by the responsible bodies and entities and the results obtained with the contract, subject to the provisions of § 3 of art. 169 of this Law.

§ 1 The reasons presented by the responsible bodies and entities must be forwarded to the control bodies until the conclusion of the process instruction phase and cannot be removed from the records.

§ 2 The omission in the provision of information will not impede the deliberations of the control bodies nor will it delay the application of any of its processing and deliberation deadlines.

§ 3 The oversight bodies will disregard documents that are impertinent, merely delaying or of no interest in clarifying the facts.

§ 4 Any bidder, contractor or individual or legal entity may represent the internal control bodies or the competent court of auditors against irregularities in the application of this Law.

Art. 171. In the inspection of control, the following shall be observed:

I - providing managers with an opportunity to express their views on possible referral proposals that will have a significant impact on the work routines of the bodies and entities inspected, so that they can provide subsidies for a prior assessment of the cost-benefit ratio of these possible proposals;

II - adoption of objective and impartial procedures and preparation of technically based reports, based exclusively on the evidence obtained and organized in accordance with the auditing standards of the respective control body, in order to prevent personal interests and biased interpretations from interfering with the presentation and the treatment of the facts raised;

III - definition of objectives, in the global price contract, full contract, semi-integrated contracting and integrated contracting regimes, meeting the technical, legal, budgetary and financial requirements, in accordance with the contracting purposes, and must also be inquired about the conformity of the global price with the market parameters for the contracted object, including the geographic dimension.

§ 1 When temporarily suspending the bidding process, the court of auditors must definitively rule on the merits of the irregularity that gave rise to the suspension within 25 (twenty-five) business days, counted from the date of receipt of the information to which refers to § 2 of this article, extendable for an equal period only once, and will objectively define:

I - the causes of the suspension order;

II - the way in which the service of the public interest hindered by the suspension of the bidding will be guaranteed, in the case of essential objects or contracting due to an emergency.

§ 2 Upon being notified of the order to suspend the bidding process, the body or entity shall, within 10 (ten) business days, the extension allowed:

I - inform the measures adopted to comply with the decision;

II - provide all appropriate information;

III - proceed with the determination of responsibility, if applicable.

§ 3 The decision that examines the merits of the precautionary measure referred to in § 1 of this article shall define the necessary and appropriate measures, in view of the possible alternatives, for the reorganization of the bidding process, or determine its annulment.

§ 4 Failure to comply with the provisions of § 2 of this article will give rise to the determination of liability and the obligation to repair the damage caused to the treasury.

Art. 172. (VETOED).

Art. 173. The audit courts shall, through their accounting schools, promote training events for permanent civil servants and public employees designated for the performance of essential functions for the execution of this Law, including in-person and distance courses, networks of learning, seminars and congresses on public procurement.

TITLE V

GENERAL PROVISIONS

CHAPTER I

FROM THE NATIONAL PUBLIC PROCUREMENT PORTAL (PNCP)

Art. 174. The National Public Contracting Portal (PNCP) is created, the official website for:

I - centralized and mandatory disclosure of the acts required by this Law;

II - optional hiring by bodies and entities of the Executive, Legislative and Judiciary Powers of all federative entities.

§ 1 The PNCP will be managed by the Management Committee of the National Public Contracting Network, to be chaired by a representative appointed by the President of the Republic and composed of:

I - 3 (three) representatives of the Union appointed by the President of the Republic;

II - 2 (two) representatives of the States and the Federal District appointed by the National Council of State Secretaries of Administration;

III - 2 (two) representatives of the Municipalities appointed by the National Confederation of Municipalities.

§ 2 The PNCP will contain, among others, the following information about the contracts:

I - annual hiring plans;

II - standardization electronic catalogs;

III - accreditation and pre-qualification notices, notices of direct contracting and bidding notices and respective annexes;

IV - price registration minutes;

V - contracts and additive terms;

VI - electronic invoices, when applicable.

§ 3 The PNCP shall, among other functionalities, offer:

I - unified cadastral registration system;

II - price consultation panel, health price database and access to the national electronic invoice database;

III - contract planning and management system, including the registration of the attestation of compliance with obligations provided for in § 4 of art. 88 of this Law;

IV - electronic system for holding public sessions;

V - access to the National Register of Disreputable and Suspended Companies (Ceis) and to the National Register of Punished Companies (Cnep);

VI - management system shared with the information society regarding the execution of the contract, which allows:

a) sending, recording, storing and disseminating text messages or images by the previously identified interested party;

b) access to the computerized system for monitoring works referred to in item III of the **caput** of art. 19 of this Law;

c) communication between the population and representatives of the Administration and the contractor designated to provide pertinent information and clarifications, in the form of regulations;

d) disclosure, in the form of a regulation, of a final report with information on the achievement of the objectives that have justified the hiring and any actions to be adopted to improve Management's activities.

§ 4 The PNCP will adopt the open data format and comply with the requirements provided for in Law No. 12,527, of November 18, 2011.

§ 5 (VETOED).

Art. 175. Without prejudice to the provisions of art. 174 of this Law, federative entities may establish an official website for further disclosure and execution of the respective contracts.

§ 1º As long as the integration with the PNCP is maintained, contracts may be carried out through an electronic system provided by a legal entity governed by private law, in the form of a regulation.

§ 2 (VETOED).

Art. 176. Municipalities with up to 20,000 (twenty thousand) inhabitants will have a period of 6 (six) years, counted from the date of publication of this Law, to comply with:

I - the requirements established in art. 7 and in the **caput** of art. 8 of this Law;

II - the obligation to carry out the bidding in the electronic form referred to in § 2 of art. 17 of this Law;

III - the rules relating to disclosure on an official website.

Single paragraph. Until they adopt the PNCP, the Municipalities referred to in the **caput of** this article shall:

I - publish, in an official gazette, the information required by this Law to be published on an official website, with the publication of an extract permitted;

II - make the physical version of the documents available at its offices, the charging of any amount is prohibited, except for the provision of a notice or a copy of the document, which will not exceed the cost of its graphic reproduction.

CHAPTER II

LEGISLATIVE AMENDMENTS

Art. 177. The **caput** of art. 1.048 of Law No. 13.105, of March 16, 2015 (Code of Civil Procedure), becomes effective plus the following item IV:

"Art. 1.048. ............................................... ........................................................ .............

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IV - in which the application of the provisions of the general rules for bidding and contracting referred to in item XXVII of the **caput** of art. 22 of the Federal Constitution.

........................................................ ........................................................ ..............................." (NR)

Art. 178. Title XI of the Special Part of Decree-Law No. 2,848, of December 7, 1940 (Criminal Code), becomes effective with the addition of the following Chapter II-B:

"CHAPTER II-B

CRIMES IN BIDDING AND ADMINISTRATIVE CONTRACTS

**Illegal direct hiring**

Article 337-E. Admit, enable or give rise to direct contracting outside the cases provided for by law:

Penalty - imprisonment, from 4 (four) to 8 (eight) years, and fine.

Frustration of competitive bidding

Article 337-F. Frustrating or defrauding, in order to obtain for themselves or others an advantage arising from the award of the object of the bidding, the competitive nature of the bidding process:

Penalty - imprisonment, from 4 (four) years to 8 (eight) years, and fine.

Sponsorship of improper hiring

Article 337-G. Directly or indirectly sponsor a private interest before the Public Administration, giving rise to the opening of a bidding process or the execution of a contract whose invalidation may be decreed by the Judiciary:

Penalty - imprisonment, from 6 (six) months to 3 (three) years, and fine.

Modification or irregular payment in administrative contract

Article 337-H. Admit, enable or give rise to any modification or advantage, including contractual extension, in favor of the contractor, during the execution of contracts entered into with the Public Administration, without authorization by law, in the bidding notice or in the respective contractual instruments, or even , pay an invoice disregarding the chronological order of its payment:

Penalty - imprisonment, from 4 (four) years to 8 (eight) years, and fine.

Disruption of the bidding process

Article 337-I. Prevent, disturb or defraud the performance of any act of bidding process:

Penalty - detention, from 6 (six) months to 3 (three) years, and fine.

Breach of confidentiality in bidding

Article 337-J. Disclosing the confidentiality of the proposal submitted in the bidding process or providing a third party with the opportunity to disclose it:

Penalty - imprisonment, from 2 (two) years to 3 (three) years, and fine.

Bidder withdrawal

Article 337-K. Removing or trying to remove a bidder through violence, serious threat, fraud or offer of advantage of any kind:

Penalty - imprisonment, from 3 (three) to 5 (five) years, and fine, in addition to the penalty corresponding to violence.

Single paragraph. The same penalty applies to anyone who abstains or withdraws from bidding due to an advantage offered.

Bid or contract fraud

Article 337-L. Fraud, to the detriment of the Public Administration, bidding or contract arising therefrom, by:

I - delivery of goods or provision of services with a quality or quantity different from those provided for in the notice or contractual instruments;

II - supply, as true or perfect, of counterfeit, deteriorated, unusable for consumption or expired goods;

III - delivery of one merchandise for another;

IV - alteration of the substance, quality or quantity of the goods or service provided;

V - any fraudulent means that unfairly makes the proposal or performance of the contract more costly for the Public Administration:

Penalty - imprisonment, from 4 (four) years to 8 (eight) years, and fine.

Unreliable hiring

Article 337-M. Admit a company or professional declared unsuitable to the bidding:

Penalty - imprisonment, from 1 (one) year to 3 (three) years, and fine.

§ 1 Enter into a contract with a company or professional declared to be disqualified:

Penalty - imprisonment, from 3 (three) to 6 (six) years, and fine.

§ 2 The same penalty in the caput of this article applies to those who, declared unsuitable, participate in a bidding process and, under the same penalty as in § 1 of this article, those who, declared unsuitable, enter into a contract with the Public Administration.

**undue hindrance**

Article 337-N. Obtain, prevent or unfairly hinder the registration of any interested party in the registration records or unduly promote the alteration, suspension or cancellation of the registrant's registration:

Penalty - imprisonment, from 6 (six) months to 2 (two) years, and fine.

Serious omission of data or information by designer

Article 337-O. Omitting, modifying or delivering to the Public Administration a cadastral survey or boundary condition in relevant dissonance with reality, in frustration with the competitive nature of the bidding process or to the detriment of the selection of the most advantageous proposal for the Public Administration, in contracting for the preparation of a basic project , executive project or preliminary project, in competitive dialogue or in an expression of interest procedure:

Penalty - imprisonment, from 6 (six) months to 3 (three) years, and fine.

§ 1 The information and surveys sufficient and necessary for the definition of the project solution and the respective prices by the bidder are considered as boundary conditions, including surveys, topography, demand studies, environmental conditions and other impacting environmental elements, considered as minimum requirements or mandatory in technical standards that guide the preparation of projects.

§ 2 If the crime is committed for the purpose of obtaining a benefit, direct or indirect, of one's own or of others, the penalty provided for in the caput of this article is doubled.

Article 337-P. The fine imposed on the crimes provided for in this Chapter will follow the calculation methodology provided for in this Code and may not be less than 2% (two percent) of the value of the contract auctioned or entered into with direct contracting."

Art. 179. Items II and III of the **caput** of art. 2 of Law No. 8.987, of February 13, 1995, come into force with the following wording:

"Art. 2................................................... ........................................................ ...................

........................................................ ........................................................ ..........................................

II - public service concession: the delegation of its provision, made by the granting authority, through a bidding process, in the competition or competitive dialogue modality, to a legal entity or consortium of companies that demonstrates capacity for its performance, at its own risk and for a term determined;

III - public service concession preceded by the execution of public works: the construction, in whole or in part, conservation, reform, expansion or improvement of any works of public interest, delegated by the granting authority, through a bidding process, in the competition or competitive dialogue modality, the legal entity or consortium of companies that demonstrates capacity to carry it out, at its own expense and risk, in such a way that the concessionaire's investment is remunerated and amortized upon the exploitation of the service or work for a specified period;

........................................................ ........................................................ ............................." (NR)

Art. 180. The **caput** of art. 10 of Law No. 11.079, of December 30, 2004, becomes effective with the following wording:

"Art. 10. The contracting of a public-private partnership shall be preceded by a bidding process in the competition or competitive dialogue mode, with the opening of the bidding process subject to:

........................................................ ........................................................ ............................." (NR)

CHAPTER III

TRANSITIONAL AND FINAL PROVISIONS

Art. 181. The federative entities will establish central purchases, with the objective of carrying out purchases on a large scale, to serve the various bodies and entities under their competence and to achieve the purposes of this Law.

Single paragraph. In the case of Municipalities with up to 10,000 (ten thousand) inhabitants, public consortia will preferably be set up to carry out the activities provided for in the **caput of** this article, pursuant to Law No. 11,107, of April 6, 2005.

Art. 182. The federal Executive Branch will update, every January 1st, by the Special Extended National Consumer Price Index (IPCA-E) or by an index that replaces it, the values ​​established by this Law, which will be disclosed in the PNCP.

Art. 183. The deadlines provided for in this Law will be counted with the exclusion of the start day and inclusion of the expiration date and will observe the following provisions:

I - the terms expressed in calendar days will be computed continuously;

II - terms expressed in months or years will be computed from date to date;

III - within the terms expressed in business days, only the days in which administrative office hours occur at the competent body or entity will be computed.

§ 1 Unless otherwise stated, the day of the beginning of the term is considered:

I - the first business day following the availability of information on the internet;

II - the date of attachment to the records of the acknowledgment of receipt, when the notification is by mail.

§ 2 The term is considered extended until the first following business day if the expiration date falls on a day when there is no business, if the business is closed before normal time or if there is unavailability of electronic communication.

§ 3 In the case of item II of the **caput of** this article, if in the expiration month there is no day equivalent to that of the beginning of the term, the last day of the month is considered as the term.

Art. 184. The provisions of this Law apply, as appropriate and in the absence of a specific rule, to agreements, agreements, adjustments and other similar instruments entered into by bodies and entities of the Public Administration, in the form established in the regulation of the federal Executive Power .

Art. 185. The provisions of Chapter II-B of Title XI of the Special Part of Decree-Law no. 1940 (Criminal Code).

Art. 186. The provisions of this Law apply in a subsidiary manner to 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.

Art. 187. The States, the Federal District and the Municipalities may apply the regulations issued by the Union for the execution of this Law.

Art. 188. (VETOED).

Art. 189. This Law applies to the cases provided for in the legislation that make express reference to Law No. 8666, of June 21, 1993, Law No. 10.520, of July 17, 2002, and to arts. 1 to 47-A of Law No. 12,462, of August 4, 2011.

Art. 190. The contract whose instrument was signed before the entry into force of this Law will continue to be governed by the rules provided for in the revoked legislation.

Art. 191. Until the expiry of the period referred to in item II of the **caput** of art. 193, the Administration may choose to bid or contract directly in accordance with this Law or in accordance with the laws mentioned in that item, and the chosen option must be expressly indicated in the notice or in the notice or instrument of direct contracting, the combined application being prohibited. of this Law with those mentioned in that item.

Single paragraph. In the hypothesis of the **caput of** this article, if the Administration chooses to bid in accordance with the laws mentioned in item II of the **caput** of art. 193 of this Law, the respective contract will be governed by the rules provided for therein throughout its term.

Art. 192. The contract relating to property owned by the Federal Government or by its autarchies and foundations will continue to be governed by the relevant legislation, applying this Law on a subsidiary basis.

Art. 193. The following are 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 arts. 1 to 47-A of Law No. 12,462, of August 4, 2011, after 2 (two) years have elapsed since the official publication of this Law.

Art. 194. This Law enters into force on the date of its publication.

Brasilia, April 1, 2021; 200th of Independence and 133th of the Republic.

**JAIR MESSIAH BOLSONARO**

*Anderson Gustavo Torres*

*Paulo Guedes*

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