**MINISTERIO DE TECNOLOGÍAS DE LA INFORMACIÓN Y LAS COMUNICACIONES**

**SELECTION PROCESS**

**PUBLIC TENDER No. MTIC-LP-01-2019**

**DRAFT TENDER DOCUMENT**

**OBJECTIVE**

SELECTION OF THE CONTRACTOR TO BE RESPONSIBLE FOR THE EXECUTION OF THE OPERATING CONTRACT OF THE COLOMBIAN INTERNET DOMAIN REGISTRY (ccTLD .CO)

**NOVEMBER 2019**

**INTRODUCCIÓN**

The Ministry of Information and Communication Technologies (MinTIC) makes available to interested parties the Tender Document for the selection of the Contractor in charge of executing the Operating Contract for the Colombian Internet Domain Registry (ccTLD .CO), hereinafter the "Operating Contract" or "the Contract".

The Process Documents, which include the previous studies and documents, the sector study, as well as its annexes, are available to the public in the Electronic Public Contracting System -SECOP II.

The selection of the Contractor is made through Public Tender, in accordance with the provisions of Law 1978 of 2019, Law 1882 of 2018, Law 1150 of 2007, Law 80 of 1993 and Decree 1082 of 2015.

Before applying to this Selection Process, it is necessary for you to read the following recommendations:

* Read carefully the contents of the Tender Document and the contents of the SECOP II link.
* Verify that you are not the subject of any cause of inability and incompatibility to contract.
* Make sure that you meet the conditions and the requirements set out in the Tender Document.
* Take into account the established Schedule for the development of this Selection Process.
* The Bidding Process will be provided through the SECOP II platform and the submission of observations and Proposal documents, as well as any action within the Selection Process, must be carried out only using this means and in accordance with the procedure indicated by the platform. The foregoing, except for the presentation of the Economic Proposal, which must be made in a sealed physical envelope, in accordance with the provisions of the numeral 4.2.2 of this Tender Document.
* In case of unavailability of the SECOP II platform, the steps foreseen in the "Protocol to act in the event of unavailability of SECOP II - in force as of November 19th, 2018" must be followed. The institutional mail of the entity for this Selection Process is dominio@mintic.gov.co.

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# GENERAL ASPECTS

# CALL FOR THE SELECTION PROCESS

MinTIC wants to summon, under the terms of Law 1978 of 2019, Law 1882 of 2018, Law 80 of 1993, Law 1150 of 2007 and Decree 1082 of 2015, parties interested to participate in this Selection Process, with the purpose of selecting the most favorable Proposal for the Award of the Operating Contract of the of the Colombian Internet Domain of Registry (ccTLD .CO), under the terms of this Tender Document, its Addenda and Annexes.

# OBJECT OF THE OPERATION CONTRACT

The purpose of the Operation Contract, contained in Annex 11 of this Tender Document, is the operation of the Colombian Internet Domain Registry (ccTLD .co), which includes the following activities associated with it:

1. Provision of Registration Services for Top Level Domains and Second-Level Domains.
2. Promotion and marketing of Colombia's ccTLD.
3. The commercialization, through the Registrars, of the Top Level Domain and the Second-Level Domains that are susceptible to commercialization, in accordance with the provisions of the Contract.
4. Provision of Reporting Services.
5. Provision of Abuse and Risk Mitigation Services.

# Invitation to the citizen monitoring

In compliance with the provisions of paragraph 3 of Article 66 of Law 80 of 1993 and Article 2.2.1.1.2.1.5. of Decree 1082 of 2015, the Ministry of Information and Communication Technologies (MinTIC) invites all persons and organizations interested in performing social control to the present Selection Process, in any of its phases or stages, to present the recommendations they deem appropriate, to intervene in the hearings and to consult the Process Documents in the SECOP II platform.

# COSTS OF PARTICIPATING IN THE CONTRACTING PROCESS

The costs and expenses incurred by the Stakeholders in the analysis of the Process Documents, the presentation of observations, the preparation and presentation of the offers, the presentation of observations thereto, the attendance at public hearings and any other cost or expense related to the participation in the present Selection Process shall be the exclusive responsibility of the Stakeholders and the Bidders.

The MinTIC shall in no event be liable for any such costs, regardless of the outcome of the tender.

Likewise, each Stakeholder and/or Proponent shall be exclusively and exclusively responsible for determining, evaluating and assuming the taxes, rates and contributions, as well as all other tax costs and of any other nature involved in the execution of the Contract, according to the assignment of costs and risks contemplated in this Tender Document (including its Annexes, especially Annex 11 - Minutes of the Contract), for which each Stakeholder and/or Bidder is recommended to obtain qualified advice. Therefore, the tax risk corresponds to each Stakeholder and/or Bidder and it is their responsibility to assess it.

Neither the receipt of these Terms and Conditions by any person, nor any information contained herein or provided in conjunction therewith or subsequently communicated to any person, whether orally or in writing, with respect to the Contract or this Public Tender should be deemed as an advice on investment, legal, tax, fiscal, financial, technical or other subject to any such person by the MinTIC.

# ADVERTISING AND COMMUNICATIONS

The MinTIC shall publish in SECOP II the Process Documents, including this Tender Document and any other document related to this Public Tender. The information published in SECOP II will be considered for all purposes of this Selection Process as the only binding and valid information.

All correspondence generated and related to the Bidding Process must be done through the SECOP II platform, in the Link [www.colombiacompra.gov.co](http://www.colombiacompra.gov.co), as Entity: Ministry of Information and Communications Technologies (MinTIC), with the full requirements demanded in this Tender Document and in accordance with the guidelines and conditions contained in the SECOP II platform itself, in order to facilitate its study. The foregoing, except for the presentation of the Economic Proposal, which must be made in a sealed physical envelope, in accordance with the provisions of the numeral 4.2.2 of this Tender Document.

Interested parties and eventual Bidders are recommended to visit the Colombia Compra Eficiente website (www.colombiacompra.gov.co) regarding guides, manuals, formats, videos and other information that facilitate the use and participation in the contracting process through the SECOP II platform. (<https://www.colombiacompra.gov.co/secop/que-es-el-secop-ii/manuales-y-guias-de-uso-del-secop-ii>).

It is the responsibility of the Bidders to take this information into account for the purposes of structuring and submitting their Proposals.

In case of unavailability of the system, the Bidders and Stakeholders must apply the "Protocol for SECOP II Unavailability" top be used in these cases, which can be found in the Colombia Compra Eficiente support site: <https://www.colombiacompra.gov.co/sites/cce_public/files/cce_documentos/protocolo_de_indisponibilidad_secop_ii.pdf>. Interested parties may contact the Service Desk of Colombia Compra Eficiente, through the telephone numbers 7456788 in Bogotá and 01800 520808 for the rest of the country.

According to what is indicated in the numeral 9.1 of this Tender Document, only in case of unavailability of SECOP II, duly certified by Colombia Compra Eficiente, the Bidders or Interested Parties may send their certificates and documents to dominio@mintic.gov.co, according to the guidelines of the "Protocol for Unavailability of SECOP II" already mentioned. If the unavailability of the system is not certified by Colombia Compra Eficiente, the communications and other documents received in said e-mail will not be taken into account, on the understanding that the entire Selection Process is processed on the SECOP II platform.

# UNSPSC CLASSIFICATION

The procurement object of the present Selection Process is coded in the United Nations Classifier for Goods and Services (UNSPSC) at the third level, as indicated in the following Table.

Encoding in the UNSPSC system

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Code** | **Group** | **Segment** | **Family** | **Class** |
| 811121 | F. Services | 81. Services based on Engineering, Research and Technology. | 11. Computer Services | 21. Internet services |
| 811120 | F. Services | 81. Services based on Engineering, Research and Technology. | 11. Computer Services | 20. Data services |
| 811118 | F. Services | 81. Services based on Engineering, Research and Technology. | 11. Computer Services | 18. System Services and Systems Component Management |

# OFFICIAL BUDGET AND BUDGET AVAILABILITY

This Selection Process does not have an official budget and the MinTIC is not required to have budget availability, taking into consideration the object of the Contract and its method of payment, as well as the Contractor's source of compensation.

# INTERPRETATION RULES

This Tender Document is to be interpreted as a whole and its provisions are not to be understood separately from its general context. Therefore, the information included in the Process Documents and the Addenda that are subsequently issued is understood to be integrated into it.

In addition, the following criteria will be followed for the interpretation and understanding of the Tender Document:

1. The order of the chapters and numerals of this Tender Document serves as a reference and should not be interpreted as a relationship of priority between them.
2. The terms established in this Tender Document shall be understood as Business Days and calendar months, unless expressly indicated otherwise. For these purposes, Saturdays, Sundays and public holidays will not be considered as Business Days.
3. When the due date of a term is not a Business Day, such expiration shall be deemed to have been carried forward to the next Business Day.
4. The words that are expressly defined in the following numeral 1.9, written in initial capital letters in the present Tender Document, must be understood only in the sense granted to them according to their definition.
5. Terms not defined in the following numeral 1.9, which correspond to the definitions set forth in the Contract Minute, shall be understood in accordance with such definitions and in such a case shall also appear in initial capital letters.
6. Terms not defined in the following numeral 1.9 or in the Contract Minutes should be understood according to their natural and obvious meaning, according to their common use or the respective technical language.
7. Words in the singular shall also be understood in the plural and vice-versa when the context so requires; and words in the feminine gender shall be understood in the masculine gender and vice versa, when the context so requires.
8. The answers to the questions formulated by the Interested Parties and published in the Electronic Public Contracting System SECOP II are of an exclusively guiding nature and do not modify the terms set forth in this Tender Document, which can only be modified by means of an Addendum. In case of discrepancy between the Tender Document and the answers to the questions asked by the Interested Parties, the present Tender Document, including its Addenda and Annexes, shall prevail.
9. References to legal standards include provisions amending, supplementing, adding or replacing them.

# DEFINITIONS

For the purposes of this Tender Document, unless otherwise expressly provided, the terms in initial capital letters must be understood with the meaning indicated below. Defined terms shall be singular and plural, according to the context in which they are used. Other terms used with initial capital letters must be understood in accordance with the definition contained in Decree 1082 of 2015.

* + 1. Opening Act or Resolution

A general administrative act through which the MinTIC opens the Public Tender intended for awarding the Contract.

* + 1. Act of Awarding or Awarding

It is the decision emanating from the MinTIC by means of an administrative act, which determines the Awardee of the Tender, and to whom consequently will correspond the right and the obligation to subscribe the Contract that constitutes the object of the present Tender.

* + 1. Guarantee Agreement

It is the atypical contract contained in Annex 12, which the Bidders shall sign and deliver as an integral part of the Proposal, when the technical characteristics of the network indicated in the literals a) and b) of the numeral 7.1 are accredited through parent companies, subsidiaries or subordinates of the Bidder or of the member of the Plural Bidder, in the terms of the numeral 5.4.2of this Tender Document.

* + 1. Addenda

These are the documents issued by the MinTIC, in order to clarify, specify or modify the terms of this Tender Document after it has been issued, and which will form part of the same, for which reason they have equal validity and binding character.

* + 1. Awardee or Winning Bidder

It is the Bidder who, having submitted an Able Proposal and in accordance with the rules contained in this Tender Document, has become the holder of the right and obligation to sign the Contract, as Registry Operator.

* + 1. Annex(es)

It is the set of formats and documents attached to this Tender Document. The object of each of the Annexes is the one indicated in the numeral 1.10 of this Tender Document.

* + 1. Technical Appendix or Appendix(s)

These are the technical documents attached to the Contract and identified in the numeral 1.10 of this Tender Document, which contains obligations in charge of the Registry Operator. Any modification to a Technical Appendix shall imply the modification of the Contract.

* + 1. Awarding Hearing

It is the hearing that will take place on the date established in the Schedule contained in the numeral 2.2 of this Tender Document, with the purpose of issuing the Awarding Act or the Void Declaratory Act, as applicable, according to the rules of the Tender Document.

* + 1. Hearing for Risk Allocation and Clarifications

This is the hearing that will take place on the date established in the Schedule contained in the numeral 2.2 of this Tender Documents, with the purpose of reviewing the risk assignment of the Contract.

* + 1. Notice of Summoning

This is the notice referred to in article 2.2.1.1.2.1.2. of Decree 1082 of 2015, by means of which Stakeholders are summoned to participate in this Selection Process.

* + 1. Financial Capacity

It corresponds to the indicators indicated in the numeral 5.2, which will be subject to verification by the MinTIC in order to determine if the Proposals are able or not.

* + 1. Organizational Capability

It corresponds to the indicators indicated in the numeral 5.3, which will be subject to verification by the MinTIC in order to determine if the Proposals are able or not.

* + 1. Proposal Cover Letter or Cover Letter

This is the communication model that appears as Annex 1 of this Tender Document and that each Bidder must fill in and include in the Proposal.

* + 1. ccTLD

This means the top-level-domain country code and refers to the two-letter code assigned to each country under the ISO 3166-1 standard that identifies a country on the Internet. In the case of Colombia, the ccTLD corresponds to the .co

* + 1. Contracting Advisory Committee

It is the body in charge of advising the officer authorizing the expenditure for the development of the contractual activity carried out by the MinTIC, in accordance with the functions indicated in Resolution 1045 of 2 June 2015 and the rules that modify or replace it.

* + 1. Assessment Committee

It is the committee appointed by the MinTIC to evaluate the Proposals in this Selection Process, in accordance with the provisions of Article 2.2.1.1.2.2.3. of Decree 1082 of 2015.

* + 1. Consortium

This is the form of association referred to in numeral 1 of Article 7 of Law 80 of 1993, which allows two or more persons jointly to submit the same Proposal for the Award, formalization and execution of the Contract, jointly and severally responsible for each and every one of the obligations derived from its Proposal and from the Contract, and for the effects generated or generated by the actions, facts or omissions of all or any of the participants in these acts. In any case, if the Consortium has members that are foreign juridical persons without domicile or branch in Colombia, with the presentation of the Proposal they are obliged to constitute a branch in Colombia, in the terms indicated in the numerals 5.1.2.2 y 10.5 of this Tender Document.

* + 1. Contract

This is the contract that will be signed between the MinTIC and the Registry Operator, prior compliance with the requirements established in this Tender Document, by means of which the reciprocal obligations are imposed on the parties and the correlative rights that implement the contractual relationship that is sought to be established through this Public Tender are granted. The minutes of the Contract and its Appendices are attached to this Tender Document as Annex 11.

* + 1. Schedule

Refers to the schedule of the Selection Process contained in the numeral 2.2 of this Tender Document.

* + 1. Data Room

It is the virtual place (available via the Internet) where the MinTIC has deposited for consultation of the Stakeholders, the documents and information that it has available that can be related to the Project. The information available in the Data Room shall be for reference only and shall not bind the MinTIC in accordance with the provisions of the numeral 1.12 of this Tender Document.

* + 1. Calendar Day(s)

It is any calendar day, regardless of whether it is a Business Day or a Non-Business Day.

* + 1. Business Day(s) or Day(s)

It is any day between Mondays and Fridays of each week (both inclusive), excluding Saturdays, Sundays and holidays determined by the Law in the Republic of Colombia.

* + 1. Non-Business Day(s)

For all legal and contractual purposes related to and derived from the Tender, all Saturdays and Sundays appearing in the calendar without exception, and holidays determined by the Law in the Republic of Colombia shall be considered as Non-Business Days.

* + 1. DNS or Domain Name System

It refers to the hierarchical and decentralized system that allows the association of different resources to IP addresses and these to a domain name.

* + 1. DNSSEC (Domain Name System Security Extensions)

Refers to the electronic signature-based security extensions applicable to the DNS. To define if a zone is registered in DNSSEC, the reports published in <https://stats.dnssec-tools.org/#summary>and/or <https://www.statdns.com> will be consulted.

* + 1. Process Documents

These are the documents that make up this Public Tender, as listed in the numeral 1.10 of this Tender Document.

* + 1. Dollars or USD o Dollars of the United States of America

It is the legal tender in the United States of America.

* + 1. Top-Level Domain

For the purposes of the Operation Agreement, the Top-Level Domain will be the .co that may be used as the sole domain, or in combination with a Second Level Domain.

* + 1. Second-Level Domains

This refers to domains that denote the Registrant's activity or nature and that are used in combination with the Top-Level Domain and located to the left of it. .com, .org, edu, .gov, .net, .nom y .mil are part of the Second-Level Domains.

* + 1. Financial Statements

For the purposes of this Tender, they are the statement of financial situation, statement of results and explanatory notes to the financial statements of the Individual Bidder or of the member of the Plural Bidder, which reflect the results corresponding to the last ordinary closing, which have been taken as the basis for declaring dividends and for the settlement of income tax or its equivalent, and which are duly approved by the shareholders' meeting, partners' meeting or the competent corporate body, also attaching the report of the Statutory Auditor if applicable.

* + 1. Plural Structure

It is the Consortium or Temporary Union formed by natural and/or juridical persons, national and/or foreign, with the sole purpose of presenting a joint Proposal in the Public Tender and, if it is awarded to them, execute the Contract.

* + 1. Former Plural Structure

It corresponds to the Consortium, Temporary Union, or any other form of association permitted by Law, of which an Individual Bidder or a member of a Plural Bidder took part for the execution of a contract or project that it intends to accredit in the Selection Process.

* + 1. Previous Studies and Documents

It is the documentation listed in Article 2.2.1.1.2.1.1 of Decree 1082 of 2015 which is available under this denomination for consultation of the Stakeholders in the hyperlink of the Tender in SECOP II.

* + 1. Remuneration Factor

Refers to that part of the Remuneration that is described in the Operation Contract and that is part of the Financial Proposal.

* + 1. Closing Date or Closure

It is the date and time indicated in the Schedule of this Bidding in the numeral 2.2 of this Tender Document, which shall be the maximum date and peremptory limit for the submission of the Proposals by the Interested Parties. Once the scheduled time and day have expired, the MinTIC will not receive any more Proposals.

* + 1. Reference Information

It is the documentation that was made available to the Stakeholders in the Data Room, different from the Process Documents referred to in the numeral 1.10 of this Tender Document.

* + 1. Bid Bond

It is the guarantee referred to in the numeral 6.3 of the present Tender Document.

* + 1. gTLD

Refers to a generic top-level domain authorized by ICANN and that does not correspond to a country.

* + 1. IANA

Internet Assigned Numbers Authority. Corresponds to an ICANN department responsible for maintaining Internet unique identifier records, including domain names, protocol parameters, and Internet numbers (IP addresses and Autonomous System Numbers)

* + 1. ICANN

Internet Corporation for Assigned Names and Numbers. It is a non-profit entity, responsible for coordinating the system of Internet identifiers and ensuring that it is stable and secure.

* + 1. Stakeholder(s)

They are the national or foreign natural or juridical persons, or the group of national or foreign natural and/or juridical persons who may have an interest in this Tender, which in any case may or may not present a Proposal.

* + 1. Governing Law

It is the Law applicable in the Republic of Colombia at the Closing Date.

* + 1. Public Tender or Tender

It will be understood as the selection process initiated by the MinTIC through the Opening Resolution. [\_\_\_\_\_\_\_\_].

* + 1. Month

Any of the twelve months of the calendar year.

* + 1. MSME

It corresponds to the Individual Bidder or the member of the Plural Bidder that complies with the requirements established in the Applicable Law to be considered as a micro, small or medium enterprise. In the case of Individual Bidders or members of Plural Bidders that according to what is established in this Tender Document and the Applicable Law must be registered in the RUP; the condition of MSMEs will only be recognized when they are registered in their RUP certificate.

* + 1. Service Levels

These are the availability and quality indicators as defined in Technical Appendix 2 of the Operation Contract. The definitions of the indicators referred to in the Technical Proposal correspond to those contained in said Technical Appendix 2.

* + 1. Exchange Points

These are Internet Exchange Points (IXPs), which have the infrastructure required to exchange DNS traffic coming from one zone space to another.

* + 1. Registry Operator

Individual or Plural Bidder or the company formed by its members or its branch, which will sign the Contract once it has been declared the Awarded of the Public Tender.

* + 1. TLD Operator

An organization identified as a Technical Contact in the IANA Root Database contained on the <https://www.iana.org/domains/root/db> website, which is responsible for overseeing and operating the TLD, in accordance with the rules and policies established by ICANN.

* + 1. Incoming TLD Operator

It is the TLD Operator who in a Transition Process receives responsibility for supervising and operating the TLD.

* + 1. Outgoing TLD Operator

It is the TLD Operator who in a Transition Process hands over the responsibility of supervising and operating the TLD to an Incoming TLD Operator.

* + 1. Pesos or COP or Colombian Pesos

It is the legal tender in the Republic of Colombia.

* + 1. Tender Document or Specifications

This document is made available to the Parties interested in the Tender, which indicates the rules governing the Selection Process and the conditions, terms, and procedures under which the Bidders must formulate their Proposal to participate in the Selection Process and have the possibility of obtaining the status of Awardee.

* + 1. Selection Process

It is understood as the process initiated by the MinTIC, by means of the Opening Act, within which the Awardee will be elected, in accordance with the provisions of the Tender Documents and the Applicable Law.

* + 1. Transition Process

It is the process for which a change is made of the technical component operator of the TLD registration system and that requires a transfer from the Outgoing TLD Operator to an Incoming TLD Operator of the databases, registries and other elements that allow the provision of registration services associated with the TLD, as well as the top and second level marketing agreements through registrars and the modification of the root zone information before IANA - ICANN.

* + 1. Bidder or Bidders

It is the natural or legal person, national or foreign, (Individual Bidder) or the group of national or foreign natural or legal persons associated with each other by means of a Consortium or Temporary Union (Plural Bidder), who submit a Proposal to participate in the Tender.

* + 1. Individual Bidder

It is the natural or legal person, national or foreign, that submits a Proposal in this Tender without associating itself with other natural or legal person(s).

* + 1. Plural Bidder

It is the group of natural or legal persons, national or foreign, associated with each other by means of a Consortium or Temporary Union that jointly submit a Proposal to participate in the Tender.

* + 1. Proposal or Offer

It corresponds to the proposal presented by a Bidder, irrevocably for its subscribers, for the purpose of participating in the Tender, which must comply with the conditions and requirements established in the Tender Document.

* + 1. Financial Proposal

It is the part of the Proposal that describes the Bidder's financial offer and that must be subject to the provisions of the CAPÍTULO 8 of the Tender Document.

* + 1. Able Proposal

It is that Proposal that, by complying with the requirements set forth in the CAPÍTULO 5and other rules set forth in this Tender Document, will be considered for the evaluation of its Financial Proposal.

* + 1. Non-Able Proposal

It is that Proposal that, due to not complying with the requirements set forth in the CAPÍTULO 5and other rules set forth in this Tender Document, will not be considered for the evaluation of its Financial Proposal.

* + 1. Technical Proposal

It is the technical component of the Proposal submitted by the Bidder that will correspond in its content to that indicated in the 7.2 of this Tender Document.

* + 1. Accredited Registrar

For the purposes of this selection process, the organization accredited by ICANN as the registrar is responsible for marketing, processing the data for the registration of Requesting Users and the renewals or cancellations of Registered Users of a TLD. For the purposes of this Tender, ICANN Accredited Registrars are those who have signed the 2013 Registrar Accreditation Agreement (RAA), listed on the ICANN website. <https://www.icann.org/registrar-reports/accreditation-qualified-list.html>

* + 1. Additional Requirements

They correspond to: i) the presentation of the Letter of Presentation of the Proposal subscribed in the terms of the numeral; ii) the inscription in the RUP in the terms of the numeral 6.2 of this Tender Document, iii) the presentation of the Seriousness Guarantee, in the terms of the numeral 6.3, and iv) the certification of the payment of parafiscal contributions in the terms of the numeral 6.4 and the verifications the numerals 6.5.1; 6.5.2; 6.5.3 and 6.5.4 refer to.

The fulfillment of these requirements will not score points and their fulfillment, as well as the fulfillment of the Qualifying Requirements, will be a necessary condition to evaluate the Bidder's Financial Proposal.

* + 1. Qualifying Requirements

They correspond to: i) the legal capacity and adequate legal representation, in the terms of numeral 5.1, ii) the Financial Capacity of the Bidder, in the terms of numeral 5.2, iii) the Organizational Capacity, in the terms of numeral 5.3 and iv) the Qualifying Experience, in the terms of numeral 5.4.

The fulfillment of these requirements will not score points and their fulfillment, as well as the fulfillment of the Qualifying Requirements, will be a necessary condition to evaluate the Bidder's Financial Proposal.

* + 1. RUP

Single Register of Bidders (Registro Único de Proponentes) as defined in Article 6 of Law 1150 of 2007.

* + 1. SECOP II

It corresponds to the Electronic System of Public Contracting in the domain [www.colombiacompra.gov.co](http://www.colombiacompra.gov.co) and through which the Bidders will publish and present the documents that, according to the present Tender Document, are part of the Selection Process. The foregoing, except for the presentation of the Economic Proposal, which must be made in a sealed physical envelope, in accordance with the provisions of the numeral 4.2.2 of this Tender Document

* + 1. Control Situation

For purposes of compliance with the Qualifying Requirements, it corresponds to any of the situations described in Articles 260 and 261 of the Commercial Code.

The Control Situation must be proven, in the case of the Bidders or members of the Plural Bidder of Colombian nationality, by means of a certificate of existence and legal representation evidencing the existence of a control situation. In the case of Bidders or members of the foreign Plural Bidder, the Control Situation shall be accredited with: i) the presentation of the audited Financial Statements, corresponding to the last fiscal period, in which the existence of the Control Situation is indicated, or ii) by means of the certificate of existence and legal representation of the Bidder or of the members of the Plural Bidder in which the existence of the control situation is stated, if in the jurisdiction of incorporation of the controlled company such certificate exists and in which the register of the control information is stated, iii) by producing a document equivalent to the certificate of existence and legal representation according to the jurisdiction in which the controlled company was incorporated, provided that it was compulsory to register the control situation, or iv) by means of a certificate issued by the competent authority according to the jurisdiction in which the controlled company was incorporated, evidencing any of the control assumptions.

* + 1. Market Representative Exchange Rate o TRM (Tasa de Cambio Representativa del Mercado)

It is the exchange rate from Pesos to Dollars certified by the Superintendence of Finance and defined by article 80 of Resolution 8 of 2000 issued by the Board of Directors of Banco de la República, or by the norms modifying, abrogating or substituting it.

As provided by Banco de la República on its website, as of November 1st, 2016, information on the exchange rate of the Colombian peso provided by the Superintendence of Finance of Colombia is obtained directly from its web service, which exclusively provides the Market Representative Exchange Rate (TRM).

* + 1. TLD

The Top Level Domain is the final part of an Internet domain; i.e. the letters that follow the endpoint of any domain name.

* + 1. Handover

This is the part of the Transition Process in which databases are transferred and servers are changed from the Outgoing TLD Operators to the Incoming TLD Operators.

* + 1. Temporary Union

This is the form of association referred to in numeral 2 of Article 7 of Law 80 of 1993, which allows two or more persons jointly to submit the same Proposal for the Award, formalization and execution of the Contract, jointly and severally responsible for each and every one of the obligations derived from its Proposal and from the Contract, but penalties for non-compliance with the obligations arising from the Proposal and the Contract shall be imposed in accordance with the participation in the execution of each of the members of the Temporary Union. In any case, if the Temporary Union has members that are foreign juridical persons without domicile or branch in Colombia, with the presentation of the Proposal they are obliged to constitute a branch in Colombia, in the terms indicated in the numerals 5.1.2.2 y 10.5 of this Tender Document.

# DOCUMENTS OF THE SELECTION PROCESS

The following documents are part of this Selection Process:

* + 1. Previous Studies
		2. Study on the Sector
		3. Resolution No. [\_\_\_\_\_\_] dated [\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_], [\_\_\_\_\_\_\_\_], by which the Selection Process is opened
		4. Notice of Summoning
		5. Notice according to Article 30 of Law 80 of 1993
		6. Tender Document and its Addenda
		7. Annexes to this Tender Document, as listed below:
			1. Annex 1 – Proposal Cover Letter
			2. Annex 2 – Anti-Corruption Commitment
			3. Annex 3 – Financial Capacity
			4. Annex 4 – Organizational Capability
			5. Annex 5 – Qualifying Experience
			6. Annex 6 – Certification of Social Security Payments and Legal Contributions
			7. Annex 7 – Employment of People with Disabilities
			8. Annex 8 – Local Component
			9. Annex 9 – Technical Proposal
			10. Annex 10 – Financial Proposal
			11. Annex 11 – Minutes of the Contract, including all its Appendices:

Technical Appendix 1: Technical

Technical Appendix 2: Service Levels

* + - 1. Annex 12 – Guarantee Agreement
			2. Annex 13 – Model of Consortium
			3. Annex 14 – Model of Temporary Union
			4. Annex 15 – List of Accredited Registrars consulted in the link <https://www.domainstate.com/top-registrars.html>
		1. The documents of response to the requests for clarification and/or observation requested during the Selection Process.
		2. The minutes of the Awarding Hearings and the Hearing for Allocation of Risks and Clarifications.
		3. The administrative acts issued within the Selection Process, including the Awarding Act or the Void Declaratory Act.

# DUE DILIGENCE AND TENDER INFORMATION

It will be the responsibility of the Stakeholders to carry out all the studies, evaluations and verifications they consider necessary to formulate the Proposals based on their own information. It will be the responsibility of the Stakeholders to obtain all the information they require to carry out all the evaluations and estimates necessary to present their Proposals.

This examination shall include, among other things, the review of all matters and information related to the Contract, the legal, economic, technical, tax, fiscal, administrative, operational and financial implications that represent the terms and conditions of the Tender Document and the distribution of risks set forth in the Contract Minute and, in general, all aspects that may influence the determination of the economic, legal, financial and any other type of conditions under which the Proposal will be presented.

The examination to be made by the Stakeholders shall also include, but not be limited to, the review of all matters and information related to the execution of the Contract and the places where it will be executed, including technical and technological conditions, availability of materials, equipment, tools and personnel for the execution of the obligations foreseen in Annex 11 - Minutes of the Contract, in such a way that a complete and adequate judgment can be formed of the content and scope of the execution of the obligations derived from the Contract, and, in general, of all the aspects that can affect the fulfillment of the Contract, all of which must be taken into account for preparing the Proposal.

If any Stakeholder considers that it has not been able to obtain all the information to evaluate all the obligations and risks that the Contract foresees, or if it considers that its own estimates make it impossible for it to assume those obligations and risks, it must refrain from submitting a Proposal. The submission of the Proposal implies the acceptance that these obligations and risks shall be entirely assumed by the Awardee, as consideration for the remuneration established in Annex 11 - Minutes of the Contract and based on its Financial Proposal.

By the sole submission of the Proposal, the Bidders are deemed to have fully investigated the conditions of Contract performance, the risks, and generally, all factors determining the costs of Contract performance, which are understood to be included in the terms of their Proposal. Likewise, by the sole submission of the Proposal it is understood that the Bidders know and accept the remuneration conditions established in Annex 11 - Minutes of the Contract and assume and accept that the compliance with the payment conditions expressly stipulated in the Contract allows their economic balance to be maintained throughout its validity.

The fact that the successful Bidder has not obtained all the information, has not evaluated incorrectly, or has not considered all the information that may influence the determination of costs, expenses, income or risks, shall not exempt it from responsibility for the complete execution of the obligations contained in Annex 11 - Minutes of the Contract, nor shall entitle it to reimbursement of costs, or additional claims or acknowledgements of any nature on behalf of the MinTIC.

The MinTIC does not guarantee that the projections and estimates made by the Awardee will be complied with during the execution of the Contract, since the Awardee assumes the risks set forth in the Contract in accordance with the distribution contained therein and bears their effects, without the consequences derived from the occurrence of such risks constituting an eventual economic imbalance of the Contract, or giving rise to any claim. The foregoing, since the established assumption of risks must be taken into account by the Stakeholders and/or Bidders in the valuation of the Financial Proposal and shall be remunerated, as mentioned above, in accordance with said Proposal and with the provisions of the Contract.

In any case, if during the preparation of its Proposal, a Stakeholder finds a contradiction or error in this Tender Document, it must inform the MinTIC in writing, in order to clarify or correct, if necessary, such inaccuracy. In any case, it shall be understood that, by submitting the Proposal, the Bidder accepts and acknowledges that any contradiction or error has been resolved.

# DATA ROOM

The Stakeholders may obtain documentation and information that may be related to the Project in the virtual Data Room at the following address: [https://nam10.safelinks.protection.outlook.com/?url=https%3A%2F%2Fmicrositios.mintic.gov.co%2Fdominio.co%2F&amp;data=02%7C01%7Cabarreto%40mintic.gov.co%7Cb52607192e204e64fc0a08d7623b8080%7C1a0673c624e1476dbb4dba6a91a3c588%7C0%7C1%7C637085880007369301&amp;sdata=5JWRFFd9bZxn%2F6C2jcJZM1JGSzO%2BtQKYbdpFV0YEFjc%3D&amp;reserved=0](https://nam10.safelinks.protection.outlook.com/?url=https://micrositios.mintic.gov.co/dominio.co/&amp;data=02|01|abarreto@mintic.gov.co|b52607192e204e64fc0a08d7623b8080|1a0673c624e1476dbb4dba6a91a3c588|0|1|637085880007369301&amp;sdata=5JWRFFd9bZxn/6C2jcJZM1JGSzO+tQKYbdpFV0YEFjc=&amp;reserved=0).

The availability of studies and concepts in the Data Room is only intended to facilitate access to the information contained in the MinTIC files. Therefore, such information will be available for informational purposes only, meaning that it is not information provided by the MinTIC for purposes of the submission of Proposals, nor do they give rise to any obligation or liability on the part of the MinTIC and, therefore, do not form part of the Tender Document or the Contract.

Accordingly, it shall not serve as a basis for any claim during the performance of the Contract, nor for any additional financial recognition between the parties, not provided for in the Contract. Nor shall it serve to excuse the default of any of the parties' obligations under the Contract. All the foregoing, except that in the Tender Document or its Annexes explicit reference is made to certain documents located in the Data Room, in which case such documents or the part of them to which explicit reference is made in the Tender Document shall have only the obligatory nature and application that is explicitly foreseen in the Tender Document.

As a consequence of the above, the Stakeholders, when preparing their Proposal, should take into account that the calculation of revenues, costs, and expenses, and any other financial information, whatever they may be, should be strictly based on their own technical studies and their own estimates. In any case, the technical estimates made by the Stakeholders for the submission of their Proposal must take into account that the execution of the Contract will be governed entirely by the provisions of the said Contract, as well as in the Tender Document, and that their economic calculations must include all the aspects and requirements necessary to comply with each and every one of the contractual obligations and assume the risks foreseen in said documents.

# FIGHT AGAINST CORRUPTION

The Bidders must sing the anti-corruption commitment contained in Annex 2 in which they express their unrestricted support for the efforts of the Colombian State against corruption.

The proven breach of the anti-corruption commitment by the Bidder, its employees, representatives, advisors or any other person acting on its behalf in this Selection Process is sufficient cause for the rejection of the Proposal or for early termination of the Contract, if the breach occurs after the Awarding; notwithstanding that such breach has additional consequences.

In the event that cases of corruption are known in the present Selection Process, the fact should be reported to the Secretary of Transparency of the Presidency of the Republic through the e-mail address contacto@presidencia.gov.co, the toll-free hotline from anywhere in the country: 01 8000 913 040 or to the National General Attorney's Office.

# who can participate

The following may participate in this Public Tender and submit a Proposal: i) civil or commercial legal persons, national or foreign, of a private, public or mixed nature and ii) natural persons, national or foreign. In both cases, either individually or under Plural Structures, under the terms of Article 7 of Law 80 of 1993; in the latter case, they must inform in their respective Proposal under which type of Plural Structure modality (Consortium or Temporary Union) such Proposal is submitted.

The provisions of this Tender Document that are preached for an individual (natural person or national or foreign legal entity) are applicable both to whoever intends to participate as an Individual Bidder, and to whoever does so as part of a Plural Bidder.

# INABILITIES AND INCOMPATIBILITIES

Those who participate in this Public Tender shall not be subject to any of the causes of inability or incompatibility to contract referred to in the Political Constitution, article 8 of Law 80 of 1993, article 113 of Law 489 of 1998, numeral 4 of article 42 of Law 1952 of 2019, article 18 of Law 1150 of 2007, Law 842 of 2003, Law 1474 of 2011, article 183 of Law 1801 of 2016 and other concordant norms. The Proponent shall declare in the Proposal Cover Letter that it is not the subject of any cause of inability or incompatibility.

# CONFLICTS OF INTEREST

Those who under any circumstance find themselves in situations of conflict of interest with the MinTIC, which affect or put at risk the principles of public contracting, will not be able to participate in this Bidding and, therefore, their Proposals will not be subject to evaluation, nor will be Awardees.

Those who, directly, or whose members or partners of companies other than the open stock companies, are in a situation of conflict of interest with the MinTIC may not participate in the present Selection Process.

They will be susceptibltoof incurring a conflict of interest:

1. MinTIC officials and advisors who are part of the Assessment Committee.
2. External advisors who have been contractually bound by the MinTIC for the Selection Process.
3. Those who have been consultants or advisors for the structuring of this Selection Process or of any study contracted on the occasion thereof.
4. Members of the ccTLD.co Domain Policy Advisory Committee, with the right to speak and vote.
5. Persons who have participated in the regulation and adoption of decisions to be executed in the Contract, either as public servants or contractors of the MinTIC; especially, those who have been consultants or advisors of the studies related to the Contract.

Without prejudice to the inabilities and incompatibilities foreseen in the Law, for the purposes of this Selection Process, a conflict of interest is understood to be the situation by virtue of which a person, due to his activity, faces different alternatives of conduct in relation to direct and incompatible financial interests, none of which he/she is obliged to privilege in view of his legal or contractual obligations. In accordance with the foregoing, for the purposes of this Selection Process, there will be a conflict of interest when:

1. The result of the Selection Process directly benefits any of the subjects susceptible of incurring a conflict of interest, due to being a shareholder or investor of a Bidder or member of the Plural Bidder.
2. The result of the Selection Process directly benefits any of the subjects susceptible of incurring a conflict of interest, in the event that, as an advisor, consultant or as a consequence of any other type of commercial or labor relationship in force with a Bidder or member of a Plural Bidder at the time of submission of the Proposal, an economic benefit may derive from the mere fact of the Awarding.
3. The result of the Selection Process directly benefits any of the subjects susceptible of incurring a conflict of interest, due to having family relationships within the third degree of consanguinity, the second degree of affinity, the only civil relationship or being spouses or permanent companions of any of the advisors of a Proponent or a member of a Plural Bidder, or of any of the partners or shareholders of a Bidder or a member of a Plural Bidder at the time of the Proposal, except in cases involving an open joint-stock company.
4. The result of the Selection Process directly benefits any of the subjects susceptible of incurring a conflict of interest, by having commercial relationships with any of the advisors of a Bidder or member of a Plural Bidder at the time of submission of the Proposal, provided that such commercial relationships are in any situation that implies or that by their nature may derive in any form of profit in favor of the subject susceptible of incurring a conflict of interest, as a consequence of the result of the Selection Process.

For the purposes of the foregoing paragraphs, a direct benefit is understood to exist when the subject who may incur a conflict of interest obtains a revenue, increases the value of an asset, or receives any other type of economic benefit as a direct and immediate consequence of the outcome of the Selection Process.

In the cases indicated in the previous paragraphs, the subject in conflict of interest will be declared impeded within three (3) Days following the Closing Date and will not participate in any of the activities subsequent to its declaration of the conflict. In the case of external advisors, the impediment shall be decided by the MinTIC and, additionally, the advisor shall be replaced in order to carry out all actions related to the Selection Process after the declaration of the conflict of interest. In the event that the MinTIC deems it necessary to have external advisors during the evaluation of the Proposals, prior to their hiring, it shall require such advisors to declare that they are not involved in a conflict of interest, in accordance with this numeral.

In no case it shall be considered the existence of a conflict of interest that affects the principles governing public contracting in Colombia, especially the principles of transparency, objective selection and equality, prior to the Closing Date, as long as no Bidder exists prior to that date.

In accordance with the above rules, the Proponent must state in the Letter of Presentation of the Proposal that he, his directors, partners of companies other than open joint-stock companies, advisors and the work team with decision-making capacity in the execution of the services to be contracted, are not involved in any conflict of interest.

# SELECTION PROCESS

# DRAFT TENDER DOCUMENT

The purpose of the draft Tender Document is to provide information on the Selection Process to the public, allowing them to make observations or request clarification of its contents, and to obtain a response stating the reasons why they are accepted or rejected by the MinTIC.

In accordance with the provisions of Article 2.2.1.1.2.1.4 of Decree 1082 of 2015, Stakeholders may make comments and observations on the draft Tender Document during a term of ten (10) Business Days counted from the date of its publication.

The publication of the draft Tender Document does not create any obligation for the MinTIC to open the Selection Process.

# PUBLIC TENDER SCHEDULE

The Schedule and general description of the Public Tender is as follows:

|  |  |  |
| --- | --- | --- |
| **ACTIVITY** | **DATE** | **VENUE** |
| **FROM** | **UNTIL** |
| Publication of the Notice of Summoning | 11/5/2019 | SECOP II |
| Publication of the draft Tender Document  | 11/5/2019 | SECOP II |
| Submission of observations to the draft Tender Document | 11/5/2019 | 11/21/2019 | SECOP II |
| First Notice according to Law 80 | 11/22/2019 | SECOP II |
| Second Notice according to Law 80 | 11/26/2019 | SECOP II |
| Publication of answers to observations to the draft Tender Document | 12/06/2019 | SECOP II |
| Opening of the Selection Process and publication of the Tender Document  | 12/09/2019 | SECOP II |
| Hearing for Risk Allocation and Clarifications | 12/12/201910:00AM | Edificio Murillo Toro, Carrera 8ª between Calles 12A y 12B, Bogotá, D.C. - Basement - Auditorium  |
| Submission of observations to the Definitive Tender Document | 12/09/2019 | 12/27/2019 | SECOP II |
| Publication of answers to observations to the Definitive Tender Document  | 01/10/2020 | SECOP II |
| Latest date for issuing the Addenda | 1/21/2020 | SECOP II |
| Public Tender Closing Date | 1/27/20203:00PM | SECOP IIFinancial Proposal in hardcopy in Edificio Murillo Toro, Carrera 8ª between Calles 12A y 12B, Bogotá, D.C., 4th Floor, General Secretariat Office |
| Evaluation of Proposals | 01/28/2020 | 2/10/2020 | Edificio Murillo Toro, Carrera 8ª between Calles 12A y 12B, Bogotá, D.C.  |
| Publication of the preliminary assessment report | 2/10/2020 | SECOP II |
| Submission of observations to the preliminary assessment report and term for remedial action | 2/11/2020 | 2/17/2020 | SECOP II |
| Counter-observations | 2/18/2020 | 2/19/2020 | SECOP II |
| Publication of Responses to observations to the preliminary evaluation report | 2/26/2020 | SECOP II |
| Awarding Hearing | 2/27/202010:00AM | Edificio Murillo Toro, Carrera 8ª between Calles 12A y 12B, Bogotá, D.C. - Basement - Auditorium |
| Awarding Act Publication | 2/28/2020 | SECOP II |
| Contract Signature | Within fifteen (15) Business Days counted from the notification of the Awarding  | SECOP II |
| Presentation of the Single Performance Bond and extracontractual civil liability policy  | Within ten (10) Business Days from the date of signature of the Contract  |  |

The dates indicated above may vary as established by the MinTIC, in accordance with the Applicable Law and with the conditions foreseen in this Tender Document for the extension of the terms of the Tender, of which notice will be given to the Stakeholders and Bidders, by means of Addenda to be published in SECOP II.

The participation of the Stakeholders and Bidders and the development of the aforementioned stages shall be subject to the conditions established in the following paragraphs.

# TENDER OPENING AND CLOSING

The opening of this Bidding shall take place on the date indicated in the Schedule provided in the numeral 2.2 of this Tender Document.

The closure of the Public Tender will happen in the Closing Date indicated in the Schedule provided in the numeral 2.2 of this Tender Document.

The MinTIC may extend the deadline for the submission of Proposals, up to a term not exceeding half of that initially indicated. Extensions to the Closing Date will be communicated to the Stakeholders by means of Addenda to be published in the SECOP II.

# HEARING FOR RISK ALLOCATION AND CLARIFICATIONS

The Hearing for Risk Assignment and Clarifications will be held on the date, time and place indicated in the Schedule foreseen in the numeral 2.2 of this Tender Document, with the purpose of reviewing the assignment of risks dealt with in Article 4 of Law 1150 of 2007 and Article 2.2.1.2.1.1.2. of Decree 1082 of 2015, of which an act will be drawn up. In the same, the Stakeholders will present the observations that they consider pertinent on the allocation of risks and at the request of any of them, the MinTIC will be able to specify the content and scope of the Tender Document.

The MinTIC will respond to the questions and comments made verbally at the Hearing for Risk Allocation and Clarification when the MinTIC deems it appropriate. Unanswered questions may be put in writing. The answer to these questions will be made in the terms indicated in this Tender Document. In any case, the answers will not be understood as modifications to the Tender Document, while the modifications to this Tender Document will be made by the MinTIC following the procedure for Addenda.

Stakeholders shall make all evaluations and estimates necessary to submit their Proposals, based on a careful examination of their characteristics, including studies, evaluations and verifications deemed necessary to formulate the Proposal based on their own information, such that the Bidder shall take into account the calculation of the financial aspects of the contracting, which shall include all obligations and assumption of risks emanating from the Contract.

If the Awarded Bidder has incorrectly evaluated or has not considered all information that may influence the determination of costs, it shall not be relieved of its responsibility for the full execution of the Contract, nor shall it be entitled to reimbursement of costs or to additional claims or acknowledgements of any nature.

Attendance at this hearing will not be compulsory, but despite not attending it, what is consulted, analyzed or specified therein will be presumed to be known and accepted by all the Bidders.

# AMENDMENTS AND CLARIFICATIONS TO THE TENDER DOCUMENT

# QUESTIONS FROM STAKEHOLDERS

Any person may formulate questions to the MinTIC regarding the contents of this Tender Document from the opening date of the Tender and until the date set forth in the Schedule contained in the numeral 2.2 of this Tender Document, by means of a written communication sent through SECOP II, as indicated in this Tender Document.

The MinTIC will answer to the person who asked the question within the timeframe set forth in the numeral 2.2 of this Tender Document, and will publish the questions asked and the answers given in SECOP II.

Neither the documents containing the answers given by the MinTIC, nor the answers will be understood as modifications to the Tender Document. The modifications to this Tender Document will be made by the MinTIC following the procedure of Addenda described in the numeral 2.5.3 of this Tender Document.

# EXTEMPORANEOUS QUESTIONS

Those questions formulated by the Stakeholders after the deadline for it indicated in the Schedule provided in the numeral 2.2 of this Tender Document shall be treated in accordance with the constitutional and legal provisions in force referring to the right of petition. Notwithstanding the foregoing, the MinTIC will make its best efforts to answer questions posed by Stakeholders prior to the Closing Date.

# AMENDMENTS AND CLARIFICATIONS TO THE TENDER DOCUMENT

Additions, modifications or clarifications to the Specifications shall be adopted via Addenda, in which it shall be expressly stated that it is a modification, addition or clarification to the Tender Document.

The MinTIC shall make such modifications as it deems necessary from the opening date until the fourth Business Day preceding the Closing Date. However, the MinTIC may issue Addenda to modify the Schedule established in the numeral 2.2 once the deadline for submission of Proposals has expired and prior to the Awarding.

The Addenda by means of which the Tender Document is interpreted, clarified, modified or supplemented shall form part of the Tender Document from the date on which they are issued, and shall be taken into account by the Stakeholders for the formulation of their Proposals.

The publication of an Addendum on the SECOP II website shall be deemed to be an official publication for the Bidders, and no claims in this respect shall be accepted.

# LANGUAGE

The language of this Bidding Process is Spanish and, therefore, the documents and communications delivered, sent or issued by the Interested Stakeholders and the Bidders for the purposes of this Public Tender must be in Spanish.

Documents and communications in a different language must be submitted in their original language along with the Spanish translation. In accordance with the provisions of the Single External Circular Letter of Colombia Compra Eficiente, the following rules are established:

1. The Bidders may submit with the Proposal, the documents with a simple translation into Spanish but, in any case, the document duly translated by an official translator must be provided before the expiration of the maximum term for the accomplishment of corrections foreseen in the schedule contained in the numeral 2.2 of the Tender Document.
2. Taking into account their specialized nature and their use and acceptance in the market, the certifications from ICANN referred to in the numeral 5.4.1d) of this Tender Document may be provided in their original language accompanied by a simple translation into Spanish. No official translation will be required for these documents.

# DOCUMENTS ISSUED ABROAD

All public documents issued abroad must be apostilled or legalized by the competent entity from the country of origin, so that they can have legal effects in Colombia, in accordance with the provisions of Law 455 of 1998 and Article 480 of the Commercial Code.

For purposes of processing apostille or legalization of documents issued abroad, it must be as established in Resolution No. 10547 of December 14, 2018 "By which it adopts the procedure to apostille and / or legalize documents and repeals Resolution 3269 of June 14, 2016" issued by the Ministry of Foreign Affairs of the Republic of Colombia. In the case of documents of a public nature granted abroad, the legalization process is not required, provided that it comes from one of the countries signatory of the Convention on the Abolition of the Requirement of Legalization for Foreign Public Documents signed in The Hague on October 5, 1961, approved by Law 455 of 1998, in which case only the apostille will be required.

In any case, when the powers of attorney referred to in the paragraph 4.1 of this tender Document are granted abroad, in addition to complying with the formalities that, in accordance with the law of the country of origin, are necessary for the validity and enforceability of the power of attorney, it will be necessary for said power of attorney to be the object of the respective legalization or apostille procedure, as applicable.

The legalization or apostille, as appropriate, shall expressly refer to: i) the authenticity of the signature of the person signing the public document, ii) the position under which that person has acted when signing the document, and iii) where appropriate, the indication of the seal or stamp it bears. Consequently, the submission of authentic copies of public documents that have been the object of the legalization or apostille procedure (or authentic copies issued by a Colombian notary), as the case may be, shall not be considered valid if said copy does not state that the original of the public document had been the object of the apostille or legalization procedure, in the terms indicated in this numeral.

According to the Single External Circular Letter of Colombia Compra Eficiente, private documents granted abroad do not require legalization or apostille.

It is not required that the formats to be filled in by the Bidders for the submission of their Proposals must comply with the procedure described in this numeral.

# CURRENCY

The values of the Proposal and those values that must be presented in the Annexes of this Tender Document must be presented in Colombian Pesos. When a value is expressed in foreign currencies in the accredited Financial Statement it shall be converted into Pesos, taking into account the following:

1. Financial Statements denominated in a currency other than the Peso must be expressed in Colombian currency, in accordance with the provisions of International Accounting Standard 21, incorporated into Colombian legislation by Decree 2615 of 2014.
2. If the values of the Financial Statements are originally expressed in U.S. Dollars, the Bidder and the MinTIC shall take into account the TRM certified by the Colombian Finance Superintendence in the following manner:
	1. The financial status statement shall be converted to the TRM in force on the closing date of the financial statements.
	2. The income statement will be converted to the average TRM of the closing year, which is published by Banco de la República.
3. If the values in the Financial Statements are originally expressed in a currency other than U.S. Dollars, they must initially be converted into U.S. Dollars using for that purpose:
	1. The financial status statement will be converted to the cut-off date of the Financial Statements, using the exchange rates appearing on the United States Federal Reserve website: <https://www.federalreserve.gov/releases/h10/default.htm>
	2. The income statement will be converted at the average exchange rate for the closure year of the Financial Statements, using the average exchange rate published on the U.S. Federal Reserve website. <https://www.federalreserve.gov/releases/g5a/current/default.htm>
	3. Once this is done, it shall proceed in the manner indicated in literal ii above.

The conversion of the Financial Statements from foreign currency to Colombian Pesos must be performed and signed by an accountant admitted by the Central Board of Accountants to practice the profession in Colombia. The accountant in charge of the conversion shall subscribe Annexes 3 and 4, which shall be accompanied by a copy of his/her professional card and certificate of disciplinary background and the validity of the registration, issued no more than one month in advance, by the Central Board of Accountants.

# ASSESSMENT COMMITTEE

The MinTIC will designate an Assessment Committee, in the terms of Article 2.2.1.1.2.2.3 of Decree 1082 of 2015, which will carry out its job in an objective manner, adhering exclusively to the rules contained in the Tender Document. The advisory nature of the Committee does not absolve it of the responsibility of carrying out the work entrusted to it. In the event that the MinTIC does not accept the recommendation made by the Assessment Committee, it must justify its decision.

The members of the Assessment Committee are subject to the regime of inabilities and incompatibilities and conflict of interest provided for in the Constitution, the Law and in this Tender Document.

# CONDITIONS FOR THE SUBMISSION OF PROPOSALS

# SECOP II

The Bidders shall submit their Proposals, under the terms and conditions set forth in this Tender Document, through the SECOP II platform. In order to do so, they must be duly registered in said platform, which applies to Plural Bidders, who must register in SECOP II as such. In general, the Bidders should make use of the "SECOP II Usage Manual for Suppliers" and the "Quick Guide to Submitting Offers in SECOP II" of Colombia Compra Eficiente.

Likewise, all the Bidders will present observations, clarifications, corrections, and, in general, any document related to the Public Tender through this platform. Except for the submission of the Economic Proposal under the conditions set forth in numeral 4.2.2, the MinTIC will consider as not presented the documents that the proposer collects in a physical way, by electronic mail or by any other means of communication.

All documents issued by the MinTIC on the Public Tender shall be published in SECOP II, within the terms set forth in the Schedule set forth in the numeral 2.2 of this Tender Document.

In case of unavailability of the SECOP II platform at the moment of uploading the Proposal, the procedure established for these cases in the "Protocol for SECOP II Unavailability", available in the . Colombia Compra Eficiente support site, must be followed: https://www.colombiacompra.gov.co/sites/cce\_public/files/cce\_documentos/protocolo\_de\_indisponibilidad\_secop\_ii.pdf, in accordance with what is indicated in numeral 9.1 of this Tender Document.

# REMEDIABILITY RULES

The Bidders have the responsibility and burden of submitting their Proposals in full and complete form, that is to say, meeting all the requirements and conditions established in the Tender Document and in the Applicable Law, attaching all the supporting documents or proof of the conditions that they intend to assert in the Public Tender.

Those requirements of the Proposal affecting the assignment of score may not be subject to correction, for which reason they must be contributed by the Bidders from the very moment of submission of the Proposal.

Under the terms of paragraph 1st of article 5 of Law 1150 of 2007, those requirements of the Proposal that do not affect the assignment of score must be requested by the MinTIC and, in any case, provided by the Bidders until the end of the transfer of the preliminary evaluation report, in accordance with the Schedule foreseen in the numeral 2.2 of this Tender Document. Proposals of Bidders who do not provide the information within the period indicated will be rejected. For the purposes of verification of the accreditation of such requirements, substance shall take precedence over form. Pursuant to the foregoing, the MinTIC may require the Bidders to submit documents in addition to those contained in the Proposals, as indicated below.

From the Closing Date until the publication of the preliminary evaluation report, the MinTIC may request from the Bidders the clarifications and precisions it deems necessary, and request the documents it deems appropriate, provided that this does not violate the principles of equality and transparency of public contracting. In any case, in accordance with numeral 8 of article 30 of Law 80 of 1993, the clarifications or documents the Bidder submits at the request of the MinTIC may not modify or complement the Proposal.

The Bidders shall have the opportunity to provide the clarifications, precisions and/or documents that may be subject to correction until the end of the transfer of the preliminary evaluation report.

During the term granted to remedy the Proposals, the Bidders may not accredit circumstances that occurred after the Closing Date of the Selection Process.

In the event that the MinTIC becomes aware of the absence of requirements or the lack of documents referring to the future contracting or to the Bidder that are not necessary for the comparison of the Proposals, and which were not required in the preliminary evaluation report, the MinTIC may request so to the Bidder, granting only to said Bidder a term equal to that established for the transfer of the preliminary evaluation report, for the purpose of bringing them together. If necessary, the MinTIC will adjust the Schedule foreseen in the numeral 2.2 of this Tender Document.
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The MinTIC may also request reports from third parties when it deems it convenient or necessary for the analysis and evaluation of the Proposals.

All documents submitted by the Bidders, as a result of requests made by the MinTIC, or as part of observations or counter-observations, will be assessed by the MinTIC, in accordance with the principle of healthy criticism of the evidence submitted to an administrative proceeding.

Upon expiration of the transfer term and if the information provided by the Bidder is not sufficient in the opinion of the MinTIC, the MinTIC may reject the Proposal, in compliance with paragraph 1st of article 5 of Law 1150 of 2007, in the wording introduced by Law 1882 of 2018.

# MODIFICATION AND WITHDRAWAL OF PROPOSALS

The Bidders may modify the information contained in their Proposals and uploaded through SECOP II until before the Closing Date, in the terms provided in the "Quick Guide to Submitting Offers in SECOP II" of Colombia Compra Eficiente. The modification of the Proposal after the Closing Date won’t be allowed.

Similarly, the Tenderers may withdraw their Tenders definitively before the Closing Date, in the terms provided in the "Quick Guide to Submitting Offers in SECOP II" of Colombia Compra Eficiente. The withdrawal of the Proposal after the Closing Date won’t be allowed

# VALIDITY OF PROPOSALS

The submitted Proposals must be valid for six (6) months after the Closing Date, but in any case its validity will be automatically extended when the MinTIC resolves to extend the terms foreseen for the evaluation, award or subscription of the Contract. The extension of the term will be for a term equal to that of the extension(s) determined by the MinTIC.

# CONFIDENTIAL INFORMATION

Should the Proposals contain confidential or private information, in accordance with Colombian law, such quality must be clearly indicated by expressing the legal norms on which it is based. In any event, MinTIC reserves the right to disclose such information to its agents or consultants in order to evaluate the Proposals.

The MinTIC, its agents and advisors shall be obliged to maintain the confidentiality of the information to which such quality corresponds in accordance with the law. However, the MinTIC, its employees, agents or advisors shall only be liable for damages arising from the disclosure of confidential or private information contained in the Proposals, in the terms set forth in the Political Constitution - especially Article 90 - and in the Applicable Law. In the event that the Proposal does not indicate the confidential nature of any information or does not quote the rules on which such confidentiality is based, or the rules cited are not applicable, the MinTIC will not be responsible for its disclosure. The Proponent must request confidentiality and attach the corresponding justification at the time of submitting the Proposal.

The Bidder guarantees that it has obtained all the necessary consents and authorizations from the holders of personal data in order for the MinTIC to be able to use said information in its processes.

# TECHNICAL SPECIFICATIONS AND PROCEDURES

The Bidder accepts, with the submission of its Proposal, that, in the event of being the Awardee, it will comply with every one of the results foreseen in the Contract. Likewise, it is understood that it has performed the cost calculations, based on its own studies, projections and technological capacity, necessary to prepare its Financial Proposal, taking into account that it will assume said obligations, as well as the risks that the fulfillment of these entails, in the terms that are derived from the stipulations of the Contract.

# ACCEPTANCE OF THE MINUTES OF THE CONTRACT

By the sole submission of the Proposal, it shall be understood that the Bidder accepts every one of the clauses included in Annex 11 - Minutes of the Contract, including its Appendices and Annexes. The minutes shall include the modifications made to them by means of Addenda.

The modifications that the Bidders intend to suggest to Annex 11 - Minutes of the Contract must be presented in accordance with the provisions of the Tender Document for submitting comments, and the MinTIC will treat them as provided therein.

# CONDITIONS FOR THE SUBMISSION OF PROPOSALS

# PROXY

The Bidders may submit Proposals directly or through a proxy, in which event they must attach to the Proposal the power of attorney, granted in legal form, in which the attorney-in-fact is granted, in a clear and express manner, ample and sufficient faculties to subscribe the Proposal Cover Letter, to act, obligate and hold each and every one of the members responsible in the processing of the present Selection Process and in the signature of the Contract.

The attorney-in-fact may be a natural or juridical person that in any case must have a permanent domicile in the Republic of Colombia, and must be empowered to represent the Bidder and/or all the members of the Plural Bidder, for the purpose of carrying out the following activities on its behalf in a specific manner: i) submit a Proposal for the present Selection Process; ii) respond to the requirements and clarifications requested by the MinTIC in the course of the present Selection Process; iii) receive the notifications that may take place within the Selection Process; iv) sign the Contract in the name and on behalf of the Awardee.

Foreign persons participating through a Plural Bidder may constitute a single common attorney-in-fact and, in such case, the presentation of the common power of attorney granted by all the members of the Plural Bidder, with the requirements of authentication, consularization and/or apostille and translation demanded in the Colombian Commercial Code and those indicated in this Tender Document, will suffice for all purposes. The power referred to in this paragraph may be granted in the same act of constitution of the Plural Bidder, as long as it complies with the requirements set forth in this numeral.

# ELABORATION AND SUBMISSION OF THE PROPOSAL

The Bidders must submit their offers through the SECOP II platform, in accordance with the requirements of the platform itself, before the Closing Date. The foregoing, except for the presentation of the Economic Proposal, which must be made in a sealed physical envelope, in accordance with the provisions of the numeral 4.2.2 of this Tender Document.

The presentation of the Proposal implies the acceptance and knowledge of the Colombian Law regarding the topics object of the present Selection Process and of all the conditions and obligations contained therein.

The Bidder will be in charge of all the costs associated to the elaboration and presentation of its Proposal, and the MinTIC in no case will be responsible for them.

# SUBMISSION OF PROPOSALS IN SECOP II

The documents and information necessary to accredit the Qualifying Requirements, the Additional Requirements, the Technical Proposal and the factors indicated in numerals 7.2, 7.3 and 7.4 of this Tender Document must only be submitted through SECOP II, following the methodology foreseen in the Quick Guide for submission of proposals to SECOP II, with the fulfillment of all the requirements established in this Tender Document.

The following documents must be submitted only through SECOP II, complying with the requirements contained in this Tender Document:

1. Proposal Cover Letter, signed in accordance with the provisions of the numeral 6.1 of this Tender Document.
2. RUP Certificate of the Individual Bidder or member of the Plural Bidder, in the case that this is required according to the numeral 6.2 of this Tender Document.
3. Documents accrediting compliance with the Qualifying Requirements regarding the legal capacity and legal representation of the Bidder or the members of the Plural Bidder, in the terms indicated in the numeral 5.1 of this Tender Document.
4. Documents accrediting compliance with the Qualifying Requirements regarding Financial Capacity, in the terms indicated in the numeral 5.2 of this Tender Document.
5. Documents accrediting compliance with the Qualifying Requirements regarding the Organizational Capability, in the terms indicated in the numeral 5.3 of this Tender Document.
6. Documents accrediting compliance with the Qualifying Requirements regarding Qualifying Experience, in the terms indicated in the numeral 5.4 of this Tender Document.
7. Bid Bond, in the terms indicated in the numeral 6.3 of this Tender Document.
8. Certification of payment of social security and parafiscal contributions in the terms indicated in the numeral 6.4 of this Tender Document.
9. Technical characteristics of the network, according to the numeral 7.1 of this Tender Document.
10. Technical Proposal, in the terms indicated in the numeral 7.2 of this Tender Document.
11. Documents for the accreditation of the factors indicated in the numerals 7.3, 7.4 and 7.5 of this Tender Document.

The Bidders must limit the documentation presented through SECOP II to that required in this section, or expressly in other parts of the Tender Document. Catalogues, brochures or documents the content of which is different from that requested in the Tender Document must not be included. Neither should the Financial Proposal be included, as indicated in the following numeral 4.2.2. The indication of the value of the Financial Proposal in the SECOP II form will lead to the rejection of the Proposal.

In the event that the Proposal includes any type of documents additional to those requested in this Tender Document, these will not be taken into account for the purposes of the evaluation, nor will they produce any legal effect regardless of their content. The foregoing is understood to have been accepted by the Bidder with the submission of its Proposal.

# SUBMISSION OF THE FINANCIAL PROPOSAL

In order to preserve the confidentiality of the Financial Proposal and taking into account the characteristics of the SECOP II platform, in this Selection Process the Financial Proposal shall **NOT** be presented through SECOP II, but shall be presented in hardcopy in a sealed envelope, in accordance with the rules set forth in this numeral. Consequently, with the sole purpose of SECOP II allowing the sending of the rest of the documents that make up the Proposal through said platform, the Bidders must place a value of only **ZERO** in the form provided for the financial proposal in SECOP II.

Before the closing date and time indicated in the Schedule contained in the numeral 2.2, the Bidder must present its Financial Proposal in physical form at the Edificio Murillo Toro, Carrera 8ª between Calles 12A y 12B, Bogotá, D.C., on the 4th floor, General Secretariat Office, in a sealed envelope labeled "Financial Proposal". The envelope of the Economic Proposal shall contain only Annex 10 - Financial Proposal duly filled out and signed by the legal representative of the Bidder, with the fulfillment of all the requirements established in this Tender Document.

The physical presentation of any document other than the Financial Proposal will not be admitted. Any document additional to Annex 10 - Financial Proposal that is included in the Financial Proposal envelope will not be considered for evaluation purposes, nor will it produce any legal effect regardless of its content. The foregoing is understood to have been accepted by the Bidder with the submission of its Proposal.

If a Bidder submits more than one Annex 10 - Financial Proposal, it will be rejected.

The receipt of the Financial Proposal envelopes shall be recorded in the minutes, which shall be signed by the official(s) of the MinTIC designated for such purpose and by the present Bidders.

# CLOSURE OF THE SELECTION PROCESS AND OPENING OF PROPOSALS

It will be understood as received by the MinTIC only the Proposals that at the date and time indicated in the Schedule foreseen in the numeral 2.2 of this Tender Document: (i) have been uploaded to SECOP II, in accordance with the requirements of the numeral 4.2.1 of this Tender Document and (ii) have submitted the envelope of Financial Proposal in hardcopy, in accordance with the provisions of the numeral 4.2.2 of this Tender Document. Proposals that, at the date and time indicated in the Schedule, have not met the two (2) above requirements shall be deemed as not been submitted.

Once the Closing Date has occurred, the MinTIC shall publish in SECOP II the list of the Bidders and the time of submission of the Proposals and the physical receipt of the envelopes of the Financial Proposals, as well as the minutes in which the receipt of the Financial Proposals has been recorded.

# PARTIAL PROPOSALS

Partial proposals will not be accepted.

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# QUALIFYING REQUIREMENTS

In accordance with the provisions of Article 5 of Law 1150 of 2007, compliance with all Qualifying Requirements, together with compliance with the Additional Requirements, will result in a Proposal being considered as an Able Proposal. The Qualifying Requirements in the present Tender are:

1. The Legal Capacity and adequate legal representation of the Bidder and of the members of the Bidder in the case of Plural Bidders, in the terms of the numerals 5.1 of this Tender Document.
2. The Financial Capacity of the Bidder and of the members of the Bidder in the case of Plural Bidders, in the terms of the numerals 5.2 of this Tender Document.
3. The Organizational Capability of the Bidder and of the members of the Bidder in the case of Plural Bidders, in the terms of the numerals 5.3 of this Tender Document.
4. The Qualifying Experience of the Bidder and of the members of the Bidder, in the terms of the numerals 5.4 of this Tender Document.

The MinTIC shall carry out the verification of the Qualifying Requirements within the term indicated in the Schedule provided in the numeral 2.2 of this Tender Document, in accordance with the documentary supports that accompany the submitted Proposal.

In accordance with the provisions of Law 1150 of 2007 and Decree 1082 of 2015, the MinTIC will carry out the verification of the Qualifying Requirements of the Bidders based on the information contained in the RUP, except in the case of natural or legal persons without domicile or branch in Colombia, who will accredit their Qualifying Requirements in accordance with the provisions of this Chapter.

In the case of Plural Bidders, the Qualifying Requirements will be accredited by each of the members of the associative figure, in accordance with the rules set forth in this Tender Document.

# LEGAL CAPACITY, EXISTENCE AND LEGAL REPRESENTATION

The Bidders must:

1. Have the legal capacity to submit the Proposal.
2. Have the legal capacity to enter into and execute the Contract.
3. Not be subject to any of the circumstances of incapacity or incompatibility provided for in the Constitution and the Law.
4. Not be reported in the last bulletin of fiscally accountable parties in force published by the Comptroller General of the Republic. This provision applies to the Bidder and members of a Plural Bidder domiciled in Colombia. In the case of foreign Bidders without domicile or branch in Colombia, they must declare that they are not liable for tax for activities carried out in Colombia in the past and that they do not have sanctions in force in Colombia that imply inability to contract with the State.

The legal capacity, existence and legal representation of the Individual Bidders or members of the Plural Bidders shall be accredited in accordance with the following rules:

# Natural Persons

Colombian individuals must present a copy of their national ID document (cédula de ciudadanía). In the case of foreigners domiciled in Colombia, a copy of their foreigner's identity card or, if they are not domiciled in the country, a copy of their passport.

The foregoing, in addition to the presentation of the RUP certificate the numeral 6.2 of this Tender Document deals with, for whom it corresponds.

In any case, foreign natural persons without domicile in Colombia must constitute an attorney-in-fact, under the same conditions indicated in the numeral 4.1 of this Tender Document.

# Legal Persons

# Existence and legal representation of legal persons of Colombian nationality or foreign with a branch in Colombia

Legal persons of Colombian nationality or of foreign nationality with a branch in Colombia must prove their existence, capacity, legal personality and legal representation by presenting the certificate of existence and representation issued by a Chamber of Commerce or the competent authority, within thirty (30) Days prior to the Closing Date.

By means of the aforementioned certificate, for each of the legal persons that present themselves in this Bidding as Individual Bidder or as a member of a Plural Bidder it will be verified:

1. Ability: that the object of the legal person allows the Proposal to be presented and the Contract to be executed.
2. Constitution and duration: that the term of duration of the legal entity is not less than the term of the Contract and at least three (3) additional years counted from its closing.

In the cases in which the expiration of the term of duration of the legal person is less than the required term, a document from the corporate body with the capacity to take this kind of determinations will be admitted, in which it is expressed the firm commitment to extend the duration of the legal person in order to reach the terms established herein, in the event that the Proposal in which it participates is awarded. Said minutes must be dated prior to the Closing Date indicated in the Schedule provided in the numeral 2.2 of this Tender Document.

In the case of branches of foreign legal persons and since the branch in Colombia is not a legal person different from the parent company, the duration date of the parent company shall be taken into account.

1. Faculties of the legal representative: that the legal representative of the legal person has the faculties to submit the Proposal and participate in the Selection Process.

When the legal representative has statutory limitations to submit the Proposal, sign the Contract or carry out any other act required for the contracting in the event of being the Awardee, the minutes stating the decision of the competent corporate body authorizing the presentation of the Proposal, the execution of the Contract and the performance of the other acts required for the contracting in the event of being the Awardee must be presented.

In the case of foreign corporations with a branch in Colombia, when the legal representative of the branch has limitations to submit the Proposal, sign the Contract or perform any other act required for the contracting in the event of being the Awardee, the minutes in which the decision of the corresponding competent organ of the foreign legal person authorizing said participation must be submitted.

In any case, a copy of the legal representative's identification document must be presented in the terms described in this Tender Document.

If the Proposal is subscribed by a foreign juridical person through the branch opened in Colombia, the legal capacity of the branch and of its representative or proxy must be accredited through the presentation of the RUP certificate and the certificate of existence and representation issued within the thirty (30) days prior to the Closing Date indicated in the Schedule foreseen in the numeral 2.2 of this Tender Document.

The definitive absence of sufficient authorization or the non-contribution of said document once requested by the MinTIC, will determine the lack of legal capacity to present the Proposal and, consequently, it will be qualified as a Non-Able Proposal.

# Existence and legal representation of foreign legal persons without a branch or domicile in Colombia

Foreign legal persons without a branch in Colombia shall prove their existence, capacity, legal personality and legal representation by means of a certificate issued by the competent authority in the country of their domicile, issued within ninety (90) days prior to the Closing Date stating their existence and the name of the legal representative of the legal person, or of the person or persons who have the capacity to legally bind them and their faculties.

If a part of the information requested in this Tender Document is not included in the mentioned certificate, or if this type of certificates does not exist, according to the laws governing these aspects in the country of origin, the information must be presented in an independent document issued by an authorized executive of the legal person or by a competent authority, as the case may be, issued within ninety (90) days prior to the Closing Date.

By means of the aforementioned certificates, for each of the legal persons that present themselves in this Bidding as Individual Bidder or as a member of a Plural Bidder it will be verified:

1. Ability: that the object of the legal person allows the Proposal to be presented and the Contract to be executed.
2. Constitution and duration: that the term of duration of the legal entity is not less than the term of the Contract and at least three (3) additional years counted from its closing.

In the cases in which the expiration of the term of duration of the legal person is less than the required term, a document from the entity with the capacity to take this kind of determinations will be admitted, in which it is expressed the firm commitment to extend the duration of the legal person in order to reach the terms established herein, in the event that the Proposal in which it participates is awarded. Said minutes must be dated prior to the Closing Date indicated in the Schedule provided in the numeral 2.2 of this Tender Document.

1. Faculties of the legal representative: that the legal representative of the legal person has the faculties to submit the Proposal and participate in the Selection Process.

When the legal representative has statutory limitations to submit the Proposal, sign the Contract or carry out any other act required for the contracting in the event of being the Awardee, the minutes stating the decision of the competent corporate body authorizing the presentation of the Proposal, the execution of the Contract and the performance of the other acts required for the contracting in the event of being the Awardee must be presented.

If in the incorporation jurisdiction there is no authority or entity that certifies the totality of the information of existence and legal representation, the Bidder legal person or foreign member of the Plural Bidder must present a sworn statement of a person with legal capacity to bind it and represent it in which it is stated that: i) there is no authority or body that certifies what is requested in this numeral; ii) the information required in this numeral, and iii) the legal capacity of the person making the declaration to bind and represent the legal person, as well as other persons that may represent and bind the legal person, if any.

Foreign legal persons not domiciled in Colombia that participate in the Tender shall constitute a proxy domiciled in Colombia, duly empowered to present the Proposal, participate and commit her/his represented entity in the different instances of the Tender, subscribe the documents and declarations that are required, provide the information that is requested, and other necessary acts in accordance with this Tender Document, as well as to represent it judicially or extra-judicially, from the moment of submission of the Proposal and up to three (3) additional years counted from the termination of the Contract, in the case in which the Plural Bidder of which it is a part is selected as the Awardee.

Said proxy may be the same sole proxy of the Plural Structure, which may be constituted as part of the agreement constituting the Consortium or Temporary Union, or in an independent document.

In any case, the document in which the proxy is constituted must comply with the provisions of articles 74 and 251 of the General Code of Procedure, including, if applicable, its apostille or legalization, in the terms indicated in numeral 2.7 of this Tender Document.

If the Awardee is a foreign legal person without a branch in Colombia as Individual Bidder or as a member of the Plural Bidder, said juridical person shall constitute a branch in Colombia for the signature of the Contract, in accordance with the numeral 10.5 of this Tender Document. By submitting the Proposal, the Bidder undertakes the fulfillment of this obligation.

# Plural Bidders

A Proposal shall be deemed to have been submitted by a Plural Structure and, therefore, a Plural Bidder shall be deemed to have submitted it when two or more natural and/or legal persons jointly submit a single Proposal under the form of a Consortium or Temporary Union. In such case, the Bidder will be, for all purposes within this Tender, the group formed by the plurality of persons and not the persons that form it as individually considered.

The submission of Proposals by Plural Bidders shall be subject to the following conditions:

# Existence and legal representation of the members

The Plural Bidders shall accredit the existence, validity, legal representation and legal capacity of the members of the Plural Structure and the faculties of their legal representatives, in the terms indicated in the numerals 5.1.1 and 5.1.2 in this Tender Document, to sign the Consortium agreement dealt with in the following numeral 5.1.3.2, for the presentation of the Proposal and for the execution of the Contract.

# Contract of Consortium or Temporary Union

The Bidder must accredit the subscription of an agreement for the formation of a Consortium or a Temporary Union and, specifically, the circumstance of being one or the other.

In order to constitute a Temporary Union, it must be expressed clearly and explicitly; otherwise, in the case of Proposals submitted by two (2) or more persons, the intention to participate in the as Consortium in the Selection Process shall be presumed, with the effects and consequences that this form of association entails for the Bidders, in accordance with the provisions of article 7 of Law 80 of 1993. The intention to participate in the Tender as Consortium shall also be presumed, with the aforementioned effects, when the Temporary Union agreement does not clearly indicate the terms and extent of the participation of each of the members of the Temporary Union in the Proposal and in the Contract.

# Common Representative

As part of the agreement establishing the Consortium or Temporary Union, or in an independent document, the persons associated in a Consortium or Temporary Union must constitute a common representative and, at least, an alternate with sufficient faculties for representation without limitations, of each and every one of the members of the Consortium or Temporary Union, in all aspects required from the submission of the Proposal until the expiration of the second month counted from the notification of the Awarding and, in the event of being the Awardee, the term of office shall extend for the entire term of the Contract and three (3) more years.

Said document must be signed by every one of the members of the Plural Proposer and, in the case of the legal person, by the legal representative of said person, by means of a handwritten, electronic or digital signature, or by the proxy of any of the foregoing.

In the event the Consortium or the Temporary Union involves foreign legal persons without domicile in the country, the provisions of the numeral 5.1.2.2 of this Tender Document must also be complied with.

# Duration of Consortium or Temporary Union

In the agreement establishing the Consortium or Temporary Union, a minimum term for duration of the Consortium or Temporary Union must be accredited, at least equal to the term of the Contract and three (3) additional years.

# Permanence of the members of the Consortium or Temporary Union

The members of the Consortium or Temporary Union that appear in the Proposal must remain as such, with the agreed responsibilities and participations, during the entire Selection Process and the execution of the Contract. The terms of this Agreement may only be modified with the prior authorization from the MinTIC.

# Registration in SECOP II

Plural Bidders must be registered on the SECOP II platform, as indicated in the current manual for suppliers of Colombia Compra Eficiente.

# Financial Capacity

As Financial Capacity the Bidders must accredit the following indicators in the terms indicated in Annex 3 - Financial Capacity and calculated based on the information as of December 31st, 2018 or, when this does not apply, to the last available closing of the Financial Statements, based on which the income tax or its equivalent has been declared:

|  |  |  |
| --- | --- | --- |
| **Indicator** | **Formula** | **Requisite** |
| Liquidity Ratio | Current Assets over Current Liabilities | Greater than or equal to 1.2 |
| Level of indebtedness | Total Liabilities over Total Assets | Less than or equal to 70% |
| Interest Coverage Ratio | Operating Income over Interest Expenses | Greater than or equal to 2.0 |
| Working Capital | Current Assets minus Current Liabilities | Greater than or equal to $25.000.000.000,oo in 2019 |
| Equity | Total Assets minus Total Liabilities | Greater than or equal to $27.000.000.000,oo in 2019 |

## Liquidity Ratio

The Bidder must demonstrate a Liquidity Ratio, understood as the result of dividing its Current Assets by its Current Liabilities, greater than or equal to 1.2, in which case this requirement will be understood as met.

$$Liquidity Ratio= \frac{Current Assets}{Current Liabilities}\geq 1.2$$

## Level of Indebtedness

The Bidder must demonstrate a Level of Indebtedness, understood as the result of dividing its Total Liabilities over its Total Assets, less than or equal to 70%, in which case this requirement will be understood as met.

$$Level of Indebtedness=\frac{Total Liabilitiel}{Total Assets}\leq 70\%$$

## Interest Coverage Ratio

The Bidder must demonstrate an Interest Coverage Ratio, understood as the result of dividing its Operating Income by its Interest Expenses greater than or equal to 2.0, in which case this requirement will be deemed to as met.

$$Interest Coverage Ratio=\frac{Operating Income}{Interest Expenses}\geq 2.0 $$

For the Interest Coverage Ratio indicator, the Bidder whose interest expenses are zero (0) may not calculate the aforementioned indicator. In this case, the Bidder complies with the indicator, unless its operating profit is negative, in which case it does not comply with the interest coverage ratio indicator.

## Working Capital

The Bidder must demonstrate to have Working Capital, understood as the result of subtracting its Current Liabilities from its Current Assets, greater than or equal to $25,000,000,000.oo in 2019, in which case this requirement will be understood as met.

$$Working Capital=Current Assets- Current Liabilitiete\geq 25,000,000,000.oo in 2019$$

## Equity

The Bidder must demonstrate to have Equity, understood as the result of subtracting from its Total Assets its Total Liabilities, equal to or greater than $27,000,000,000 in 2019.

$$Equity =Total Assets -Total Liabilitie\geq 25,000,000,000.oo in 2019$$

## Financial Capacity Accreditation

The Bidders shall accredit their Financial Capacity by completing Annex 3 - Financial Capacity, where it shall be consigned the information contained in:

1. The certificate from the RUP, for the Individual Bidders or members of the Plural Bidders domiciled in Colombia. For these purposes, the financial information contained in the RUP certificate must be cut as of December 31st, 2018 or later, as applicable.
2. The Financial Statements, for Individual Bidders or members of Plural Bidders without domicile or branch in Colombia, as of December 31st, 2018 or, when this does not apply, to the last available cut of the Financial Statements, based on which the income tax or its equivalent has been declared, signed by the legal representative and the statutory auditor or accountant, as applicable. Trial balances will not be accepted. If it is in a currency other than the Peso, a copy of the Financial Statements converted to Pesos figures must also be submitted, in accordance with the procedure indicated in the numeral 2.8of this Tender Document. The opinion of the statutory auditor must also be presented, if the company is required to have one, in accordance with the applicable law.

Annex 3 - Financial Capacity shall include the required information in Colombian Pesos, following the currency conversion procedure indicated in the numeral 2.8, if applicable. If groupings the items in the Financial Statements are necessary in order to complete Annex 3, these accounting groupings must be explained.

Annex 3 - Financial Capacity must be signed by the legal representative of the Individual Bidder and the Accountant who converted the Financial Statements into Colombian pesos. In the case of Plural Bidders, each one of the members of the Plural Bidder must fill in Annex 3 - Financial Capacity, which must be subscribed by the legal representative of the member of the corresponding Plural Bidder or the proxy domiciled in Colombia, in the event described in the numeral 5.1.2.2 of this Tender Document and the Accountant who carried out the conversion of the Financial Statements into Colombian pesos. In addition, the common representative of the Plural Bidder or its proxy, if applicable, must fill out and sign Annex 3 - Financial Capacity.

Foreign Bidders or foreign members of a plural Bidder must complete Annex 3 - Financial Capacity.

In the event of discrepancies between the information set forth in Annex 3 - Financial Capacity and the documents set forth in letter B above, the information set forth in the financial statements included in the Proposal shall prevail.

## Financial Capacity Accreditation by Plural Structures

In the case of Plural Bidders, the Financial Capacity shall be accredited only by those members who have a participation equal to or greater than twenty-five percent (25%) in the Plural Structure.

Each of the members of the Plural Structure must present the RUP Certificate or the Financial Statements, as appropriate.

The components of the Financial Capacity the numerals 5.2.1, 5.2.2, 5.2.3 of this Tender Document deal with will be calculated adding the financial information of the members of the Plural Structure that have a participation equal or superior to twenty-five percent (25%) in the Plural Structure, once the same has been multiplied by the percentage of participation of the respective member in the Plural Bidder, according to the following formula:

$$Indicator=\frac{(∑\_{i=1}^{n}Component 1 of indicator\_{i} × percentage of participation\_{i})}{\left(∑\_{i=1}^{n}Component 2 of indicator\_{i} × percentage of participation\_{i}\right)}$$

Where:

n is the number of members of the Plural Bidder

The components of the Financial Capacity the numerals 5.2.4 and 5.2.5 of this Tender Document deal with will be calculated adding the financial information of the members of the Plural Structure that have a participation equal or superior to twenty-five percent (25%) in the Plural Structure, according to the following formula:

$$Indicator= \sum\_{i=1}^{n}indicator\_{i}$$

Where

n is the number of members of the Plural Bidder.

# ORGANIZATIONAL CAPABILITY

As Organizational Capability the Bidders must accredit the following indicators in the terms indicated in Annex 4 - Organizational Capability and calculated based on the information as of December 31st, 2018 or, when this does not apply, to the last available closing of the Financial Statements, based on which the income tax or its equivalent has been declared:

|  |  |  |
| --- | --- | --- |
| **Indicator** | **Formula** | **Requisite** |
| Return on Equity  | Operating income over equity | Greater than or equal to 0 |
| Return on Assets | Operating income over total assets | Greater than or equal to 0 |

## Return on Equity

The Bidder must demonstrate a Return on Equity, understood as the result of dividing its Operational profit by its equity, greater than or equal to 0, in which case this requirement will be understood as met.

$$Return on Equity = \frac{Operational income}{Equity}\geq 0$$

## Return on Assets

The Bidder must demonstrate a Return on assets, understood as the result of dividing its operating profit over its Total Assets, less than or equal to 0, in which case this requirement will be understood as met.

$$Return on Assets = \frac{Operational income}{Total Assets}\geq 0$$

## Organizational Capability Accreditation

The Bidders shall accredit their Financial Organizational Capability by completing Annex 4 - Organizational Capability, where it shall be consigned the information contained in:

1. The certificate from the RUP, for the Individual Bidders or members of the Plural Bidders domiciled in Colombia. For these purposes, the financial information contained in the RUP certificate must be cut as of December 31st, 2018 or later.
2. The Financial Statements, for Individual Bidders or members of Plural Bidders without domicile or branch in Colombia, as of December 31st, 2018 or, when this does not apply, to the last available cut of the Financial Statements, based on which the income tax or its equivalent has been declared, signed by the legal representative and the statutory auditor or accountant, as applicable. Trial balances will not be accepted. If it is in a currency other than the Peso, a copy of the Financial Statements converted to Pesos figures must also be submitted, in accordance with the procedure indicated in the numeral 2.8of this Tender Document. The opinion of the statutory auditor must also be presented, if the company is required to have one, in accordance with the applicable law.

Annex 4 - Organizational Capability shall include the required information in Colombian Pesos, following the currency conversion procedure indicated in the numeral 2.8, if applicable. If groupings the items in the Financial Statements are necessary in order to complete Annex 4, these accounting groupings must be explained.

Annex 4 - Organizational Capability must be signed by the legal representative of the Individual Bidder and the Accountant who converted the Financial Statements into Colombian pesos. In the case of Plural Bidders, each one of the members of the Plural Bidder must fill in Annex 4 - Organizational Capability, which must be subscribed by the legal representative of the member of the corresponding Plural Bidder or the proxy domiciled in Colombia, in the event described in the numeral 5.1.2.2 of this Tender Document and the Accountant who carried out the conversion of the Financial Statements into Colombian pesos. In addition, the common representative of the Plural Bidder or its proxy, if applicable, must fill out and sign Annex 4 - Organizational Capability.

Foreign Bidders or foreign members of a Plural Bidder must complete Annex 4 - Organizational Capability.

In the event of discrepancies between the information set forth in Annex 4 - Financial Organizational Capability and the documents set forth in letter B above, the information set forth in the financial statements included in the Proposal shall prevail.

## Organizational Capability Accreditation by Plural Structures

In the case of Plural Bidders, the Organizational Capability shall be accredited only by those members who have a participation equal to or greater than twenty-five percent (25%) in the Plural Structure.

Each of the members of the Plural Structure must present the RUP Certificate or the Financial Statements, as appropriate.

If the Bidder is a Plural Structure, each one of the values necessary for determining the components of the Organizational Capability the numerals 5.3.1 and 5.3.2 of this Tender Document deal with will be calculated adding the financial information of the members of the Plural Structure that have a participation equal or superior to twenty-five percent (25%) in the Plural Structure, once the same has been multiplied by the percentage of participation of the respective member in the Plural Bidder, according to the following formula:

$$Indicator=\frac{(∑\_{i=1}^{n}Component 1 of indicator\_{i} × percentage of participation\_{i})}{\left(∑\_{i=1}^{n}Component 2 of indicator\_{i} × percentage of participation\_{i}\right)}$$

Where

n is the number of members of the Plural Bidder

# Qualifying Experience

The Bidders must certify that they comply with every one of the following technical experience requirements in order for their proposal to be considered as Able Proposal:

1. Demonstrate experience as a TLD Operator (whether ccTLD or gTLD) for a period equal to or greater than two (2) continuous years; period during which such TLDs would have had at least two million (2,000,000) domain names during the entire period.

1. Demonstrate experience as a TDL Operator (whether ccTLD or gTLD) in the operation of DNS databases in which at least twenty-five (25) million average daily transactions during one (1) month have been verified. To accredit this requirement, the Bidder or the member of the Plural Bidder may accumulate several TLDs that are under its same operation.
2. Demonstrate that, as a TLD Operator (either ccTLD or gTLD), it markets the registration of domain names associated with the TLD through more than one thousand five hundred (1,500) Registrars Accredited before ICANN. Accreditation must include at least ten (10) Accredited Registrars who are among the top twenty-five (25) largest in number of domains, according to the list contained in the link <https://www.domainstate.com/top-registrars.html>, appearing as Annex 15.
3. Demonstrate that, as a TLD Operator, it has executed (1) a ccTLD Transfer of at least one million (1,000,000) domain names at the start of the process or several gTLDs that collectively add to or exceed one million (1,000,000) domain names as part of a single Handover. The Transfer this section refers to must have occurred within a maximum period of one month. Experience as an Incoming TLD Operator or as Outgoing TLD Operator is admitted.

## Qualifying Experience Accreditation

The requirements of qualifying experience indicated in the previous numeral 5.4 must be accredited by the Individual Bidder or by the member of the Plural Bidder who has at least forty percent (40%) of participation in the Plural Structure. Experience may be accredited directly or through parent companies, subsidiaries or subordinates of the Bidder or of the member of the Plural Bidder, in the terms of the numeral 5.4.2 of this tender Document, in accordance with the following rules:

1. Annex 5 - Qualifying Experience must be submitted, signed by the legal representative or attorney-in-fact of the Individual Bidder or of the member of the Plural Bidder who accredits the experience.
2. For Bidders obliged to be in the RUP, which demonstrate experience based on one or more contractual relationships, contracts are required to be recorded in the RUP where the following information will be verified: (i) name or corporate name of the contracting party; (ii) name or corporate name of the contractor; (iii) UNSPSC classification, as indicated in the numeral 1.6of this Tender Document. The rest of the information will be verified directly through the related certifications, according to the following literals d) and e).
3. For those Bidders who are not obliged to register in the RUP, in accordance with the provisions of Article 6 of Law 1150 of 2007, the information shall be verified directly through the related certifications, according to the following literals d) and e).
4. In order to accredit the experience requirements indicated in literals a); b); c) and d) of the previous numeral 5.4, the Bidders that accredit experience in ccTLD must present certification by the authority of the country the ccTLD corresponds to, subscribed by the person that exercises the legal representation of the issuer, or by the one that has the faculties to issue it, in which it is stated:
5. Identification of the ccTLD;
6. Object of the contract or designation of the person who accredits the experience as a TLD Operator of the identified ccTLD;
7. Interval during which work was or is performed as a TLD Operator of the identified ccTLD;
8. Maximum and minimum number of ccTLD domain name registrations for each year of the certificate period;
9. Average daily number of transactions for each month of each year of the certified period or indication of the month and year of the certified period in which at least the number of transactions required in the literal b) of the previous numeral 5.4 was verified, if applicable;
10. Identification of the Transition Process in which it participated as a TLD Operator, indicating: ccTLD; number of domain name registrations at the start date of the Transition Process; name of the Incoming TLD Operator; name of the Outgoing TLD Operator; duration of the Handover; start date and end date of the Handover.
11. Name of the issuer, identification and position of the person empowered to issue it. The certification must indicate the contact details of the certifier (telephone, e-mail and address) or, missing this, the Bidder may provide the contact details in Annex 5.
12. In order to accredit the experience requirements indicated in literals a); b); c) and d) of the previous numeral 5.4, the Bidders that accredit experience in gTLD must present certification by the ICANN, subscribed by the person that has the faculties to issue it, in which it is stated:
13. Identification of the gTLD;
14. Identification n of the person who accredits the experience as a TLD Operator of the identified gTLD;
15. Interval during which work was or is performed as a TLD Operator of the identified gTLD;
16. Maximum and minimum number of gTLD domain name registrations for each year of the certificate period;
17. Average daily number of transactions for each month of each year of the certified period or indication of the month and year of the certified period in which at least the number of transactions required in the literal b) of the previous numeral 5.4 was verified, if applicable;
18. Identification of the Transition Process in which it participated as a TLD Operator, indicating: gTLD; number of domain name registrations at the start date of the Transition Process; name of the Incoming TLD Operator; name of the Outgoing TLD Operator; duration of the Handover; start date and end date of the Handover.
19. Identification and position of the person empowered to issue it. The certification must indicate the contact details of the certifier (telephone, e-mail and address) or, missing this, the Bidder may provide the contact details in Annex 5.
20. In order to accredit the experience requirement indicated in the literal c) of the previous numeral 5.4, the Bidders must present Annex 5.1, signed by the legal representative or attorney-in-fact of the Individual Bidder or of the member of the Plural Bidder who accredits the experience or by the company that accredits the experience in the terms of the numeral 5.4.2 of this Tender Document and, in any case, by its statutory auditor or independent auditor. This Annex will identify the TLD and the Accredited Registrars via which, as a TLD Operator, who accredits the experience commercializes the registration of domain names associated with the TLD that it operates.

The MinTIC reserves the right to verify the information presented, in accordance with what is indicated in the numeral 9.6 of this Tender Document.

## Accreditation via the Parent, Subsidiary or Subordinate Company of the Bidder

In addition to its own experience, the Bidder or the members of the Plural Bidder may present the qualifying experience required in the numeral 5.4 of this Tender Document and/or the technical characteristics of the network indicated in the numeral 7.1 of this Tender Document, by means of its parent, subsidiary or subordinate company, provided that the requirements established in articles 260, 261 and 262 of the Commercial Code are complied with.

The Bidder or the members of the Plural Bidder must accredit the existence of a parent, subsidiary or subordinate company in the following manner:

1. If the Bidder or the members of the Plural Bidder are domestic, it is accredited by means of its certificate of existence and legal representation in which the existence of the parent, subsidiary or subordinate company is indicated.
2. If the Bidder or the members of the Plural Bidder are foreigners, it shall be so accredited:
3. Through the audited Financial Statements, corresponding to the last fiscal period, in which the existence of the Control Status is indicated.
4. By means of the certificate of existence and legal representation in which the existence of the Control Status is stated, if in the jurisdiction of incorporation of the controlled company such certificate exists and in which the registration of the control information is stated.
5. By means of the document equivalent to the certificate of existence and legal representation according to the jurisdiction of incorporation of the controlled company, provided that it was obligatory to register the Control Status.
6. By means of a certificate issued by the competent authority, according to the jurisdiction of incorporation of the controlled company, evidencing any of the control assumptions.

The certificate of existence and legal representation of the parent, subsidiary or subordinate company of which the experience is to be accredited must be provided, or in the case of foreign companies, the documents evidencing their legal representation.

In the case of accrediting the experience of its parent company, subsidiary or subordinate of Colombian nationality or that is obliged to be registered in the RUP, a copy of the respective RUP certificate must be provided, demonstrating that the experience to be accredited appears as firm in said document.

In those cases in which less than three (3) years have elapsed between the constitution of the Individual Bidder or the member of the respective Plural Bidder and the Closing Date, such persons may also accredit as Qualifying Experience the experience obtained by their shareholders or partners, provided that it is registered and signed in the RUP certificate.

However, in no case may this experience be simultaneously accredited by the partners or shareholders of a company and the company.

# Additional Requirements

In addition to the Qualifying Requirements, the Bidders must accredit the fulfillment of the Additional Requirements in order to proceed with the evaluation of their Financial Proposal. The Additional Requirements in the present Tender are:

1. The presentation of the Proposal Cover Letter, in the terms of the numeral 6.1 of this Tender Document.
2. The inscription in the RUP, when such inscription is necessary in accordance with these Terms and Conditions, numeral 6.2, and the Applicable Law.
3. Bid Bond, in the terms of the numeral 6.3 of the Tender Document.
4. The certification of the payment of parafiscal contributions in the terms of the numeral 6.4 of the Tender Document.
5. The verifications indicated in the numeral 6.5 of the Tender Document.

# PROPOSAL COVER LETTER

The Proponent must sign Annex 1 - Proposal Cover Letter, which must be signed by: i) the Bidder, when it is an Individual Bidder made up of a natural person; ii) its legal representative, when it is an Individual Bidder made up of a legal person constituted in Colombia, or abroad that does not have a branch in Colombia, iii) the legal representative of the Bidder's branch in Colombia, when it is an Individual Bidder made up of a legal person constituted abroad but with a branch in Colombia, or iv) its common representative, when the Bidder is a Plural Bidder.

The Bidders may submit Proposals directly or through a proxy, in which event they must attach to the Proposal the power of attorney, granted in legal form, in which the attorney-in-fact is granted, in a clear and express manner, ample and sufficient faculties to act, obligate and hold each and every one of the members responsible in the processing of the present Selection Process and in the signature of the Contract.

The attorney-in-fact may be a natural or juridical person, but in any case must have a permanent domicile, for the purposes of this process, in the Republic of Colombia, and must be empowered to jointly represent the Bidder and all the members of the Plural Bidder.

According to article 20 of Law 842 of 2003, if the legal representative or representative of the Individual Bidder, legal person or the legal representative or representative of the Plural Structure, does not possess a title of one of the professions catalogued as the exercise of engineering, the offer must be endorsed by a registered engineer with a professional registration card in engineering of the Basic Nucleus of Knowledge (NBC) of electronic engineering, telecommunications and related, for which a copy of the certificate of validity of professional registration issued by the competent entity, in force at the Closing Date, must be attached.

The endorsement of the engineer referred to in article 20 of Law 842 of 2003 is an integral part of Annex 1 - Proposal Cover Letter when the Bidder must present it.

With the Proposal Cover Letter, it is understood that a sworn declaration has been presented by the Bidder not to be involved in any of the inabilities or incompatibilities foreseen in the Law, nor in any conflict of interests that may affect the normal development of the Contract, as well as the lawful origin of the resources destined to the execution of the Contract.

The Proposal Cover Letter must be accompanied by a copy of the identity document of the subscriber.

# Inscription in the RUP

The Individual Bidders or the members of the Plural Bidders of Colombian nationality, foreigners domiciled in Colombia and, in any case, those who according to the Applicable Law are obliged to register in the RUP, must present along their Proposal the RUP certificate issued by a Chamber of Commerce in which it is stated that their registration was renewed in the terms of article 2.2.1.1.1.5.1 of Decree 1082 of 2015, it has not been cancelled, and it is firm at the Closing Date.

In accordance with the provisions of the Single External Circular Letter of Colombia Compra Eficiente, if at the Closing Date the registration is not firm, said requirement may be corrected in the terms of the numeral 3.2 of this Tender Document. However, as long as the registration is not firm, the State Entity cannot consider the Bidder to be qualified and evaluate its bid.

The RUP certificate shall constitute full proof of the information contained therein. Consequently, whenever the Tender Document requires the accreditation of any information that must be registered in the RUP according to the Applicable Law, the MinTIC will exclusively consider the information that prior to the Closing Date has been registered in the RUP and that is stated in the respective certificate. Therefore, Individual Bidders or members of Plural Bidders obliged to be registered in the RUP, may only provide documentation additional to the RUP certificate when this Tender Document requires the verification of information that in accordance with the Applicable Law cannot be registered in the RUP. The RUP certificate must have been issued within thirty (30) calendar days prior to the Closing Date.

Individual Bidders or members of Plural Bidders who, in accordance with the provisions of the Applicable Law, are not obliged to register in the RUP, shall not accredit this requirement, and consequently, shall accredit the respective Qualifying Requirements by means of the other mechanisms provided in this Tender Document for such purpose.

# Bid Bond

Each Bidder must submit with its Proposal a Bid Bond that complies with the terms of the Applicable Law, in particular Decree 1082 of 2015, and the present Tender Document, in favor of the Ministerio de las Tecnologías de la Información y las Comunicaciones with NIT (Tax ID No.) 899.999.053-1 and the Fondo Único de Tecnologías de la Información y las Comunicaciones (FunTIC) with NIT 800.131.648-6.

The following information must be taken into account when setting up the bid bond:

|  |  |
| --- | --- |
| **BENEFICIARY:** | Ministerio de las Tecnologías de la Información y las Comunicaciones with NIT899.999.053-1 and Fondo Único de Tecnologías de la Información y las Comunicaciones with NIT 800.131.648-6. |
| **INSURED:** | The Bidder (Business Name that appears in the Certificate of Existence and Legal Representation, issued by the Chamber of Commerce or its equivalent, without using an acronym, unless the Certificate of the Chamber of Commerce or its equivalent establishes that the entity may be identified with the acronym).In the case of consortia, temporary unions or future company promises, the plural or joint bidder must be indicated as secured and not the name of its legal representative or any of its members.The name(s) must be indicated in the same way as it(they) appear(s) in the Certificate of Existence and Legal Representation, issued by the competent authority, and the body of the policy must indicate the name or corporate name, the identification document or NIT and the percentage of participation of each of the members, in the case of plural bidder. |
| **VALIDITY:** | One hundred and eighty (180) calendar days counted from the Closing Date of the Selection Process.  |
| **INSURED VALUE:** | For a value equivalent to at least 45,254 current legal monthly minimum wages.  |
| **IDENTIFICATION:** | The text of the bond must indicate textually the number, year and object of the Selection Process. |
| **SIGNATURES:** | It must be signed both by the issuer and by the policyholder. |

Failure to deliver the Bid Bond together with the Proposal will not be rectifiable and will be cause for rejection of the same.

Any error or inaccuracy in the text of the presented guarantee shall be subject to clarification by the Bidder until the end of the transfer of the evaluation report indicated in the Schedule contained in the numeral 2.2.

If the Schedule is modified in the course of the Bidding Process, the Bidder shall extend the term of the Bid Bond until the requirements for execution of the respective Contract have been met and complied with.

During the evaluation period, the Proposal shall be irrevocable, such that the Bidder may not withdraw or modify the terms or conditions thereof, under penalty of the MinTIC enforcing the Bid Bond.

The MinTIC shall return the Bid Bond once the Contract is signed, at the request of the Bidders not favored in this Selection Process.

## Bond Types

The Bid Bond may be presented in the form of: i) insurance policy, ii) autonomous patrimony, and iii) bank guarantee upon first request or stand-by letter of credit.

## Insurance policy

The insurance policy must be issued by an insurance company authorized by the Colombian Finance Superintendence to operate in Colombia, at the expense of the Bidder and in favor of the MinTIC, with indication of the number and object of the Public Tender, in the terms provided in Decree 1082 of 2015.

In this bond, it must appear as insured and beneficiary the Ministerio de las Tecnologías de la Información y las Comunicaciones with NIT. 899.999.053-1 and the Fondo Único de Tecnologías de la Información y las Comunicaciones with NIT 800.131.648-6, and as taker the Bidder and each of its members if the Proposal were presented in the form of a Plural Biddder.

## Autonomous patrimony as warranty.

The constitution of autonomous assets in guarantee in favor of the MinTIC - FunTIC, with assets and/or rights held in trust by the Individual Bidder, the members of the Plural Bidder, or a third party that is willing and has the faculty to assume the obligations of the Bidder, with a trust company authorized by the Colombian Finance Superintendence to enter into commercial trust contracts in guarantee, in the terms indicated in Decree 1082 of 2015, or the norms that modify, add or substitute it, shall be admissible as Bid Bond of the Proposal.

In addition to the general and term requirements set forth in the numeral 6.3.2, the value of the guarantee set forth in the numeral6.3.3, and the protections set forth in the numeral 6.3.4 of this Tender Document, in the guarantee certificates issued by the trust company of the autonomous patrimony in guarantee must be stated:

1. That the MinTIC - FunTIC are the beneficiaries of the autonomous patrimony.
2. That the patrimony covers the non-compliance of the obligations described in the numeral 6.3.4 of this Tender Document.
3. The value of the assets and rights held in trust as stated in the last updated financial statements of the trust and a detailed description thereof; and the sufficiency thereof to cover the protections.
4. That the assets and trust rights do not have any encumbrance or limitation to the domain in favor of a third party or the Bidder.
5. The procedure to be followed in the event that the guarantee becomes enforceable, which shall begin with the simple presentation by the MinTIC of the firm administrative act declaring the Bidder's noncompliance with its Proposal, and the priority that the contracting entity has for the payment.

For this purpose, the guarantee certificate must provide that the MinTIC and the FunTIC, in their capacity as beneficiaries, are in first place in the priority of payments in the event that the guarantee becomes effective, indicating that -at the date of issuance of the guarantee certificate- there are no tax, labor, parafiscal or any other liabilities that, in accordance with Colombian legal norms, are in a better payment priority than that granted to the MinTIC and the FunTIC and that the assets and rights held in trust are sufficient to cover the obligations protected by the Bidder.

1. The mechanisms through which the fiduciary will have the resources to make the bond effective, which in any case cannot affect the sufficiency of the guarantee.

In any case, the autonomous patrimony and the trust assets must comply with the requirements established by Decree 1082 of 2015.

In the event that the autonomous patrimony in guarantee is composed of real estate, the source of the predetermined rents thereof must have a duration equal to the term of the granted guarantee, and shall be part of the autonomous patrimony in its entirety, without any balance being returned to the settlor or delivered to a third party.

## Bank guarantee upon first request.

If the Bid Bond is a bank guarantee upon first request, this one, in addition to complying with the requirements established in Decree 1082 of 2015, must be granted by a financial entity authorized by the Colombian Finance Superintendence or whoever, for this purpose, assumes the firm, irrevocable, autonomous, independent and unconditional commitment to pay directly to the MinTIC - FunTIC, upon first request, up to the guaranteed amount, a sum of money equivalent to the value indicated in the numeral 6.3.3 of this Tender Document.

In order to be acceptable to the MinTIC, the bank guarantee must be contained in a private document duly signed by the legal representative of the guarantor financial institution, or by its attorney-in-fact, in which the credit institution expressly, autonomously and irrevocably assumes in favor of the MinTIC - FunTIC the commitment to pay the value of the guarantee, in case of default by the Bidder, and expressly acknowledges its waiver to the benefit of exclusion.

The bank guarantee must be accompanied by the certificate of existence and representation of the financial entity issued by the Colombian Finance Superintendence a or by whoever acts in the event that the same is issued by a foreign financial entity.

## Stand-by letter of credit

The Bid Bond may be constituted through the subscription of a stand-by letter of credit according to which a financial entity authorized by the Colombian Finance Superintendence, or whoever acts for the purpose, acting at the request and in accordance with the instructions of the Bidder, undertakes to irrevocably guarantee the payment in cash of the obligations that arise for the Bidder on the occasion of the Proposal under the terms of Decree 1082 of 2015. If the stand-by letter of credit is granted by a foreign entity, this one must authorize payment through a financial entity established and legally authorized to operate in Colombia. Payment must be made upon delivery of the letter of credit, accompanied by the duly executed administrative act, in which the failure of the Bidder is recorded.

## General Requirements and Term of the Bid Bond

The Bid Bond must comply with the following general requirements in accordance with the modality selected by the Bidder and must be granted in accordance with the term indicated below, without prejudice to the provisions of each of the numerals regulating the different acceptable guarantees and of Decree 1082 of 2015.

The Bid Bond must be granted in favor of the MinTIC – FunTIC. The Bid Bond shall be in force for one hundred and eighty (180) Calendar Days from the Closing Date, and in any case, shall remain in force until the date of approval of the Contract performance guarantee.

The Bidder shall extend the originally agreed term of the Bid Bond in the event that the MinTIC resolves to extend the terms established for the submission of Proposals and/or for the evaluation and Awarding of the Contract and/or for the execution of the Contract, or when such terms are suspended by means of a resolution motivated by the MinTIC, provided that such extensions do not exceed three (3) months.

Failure to extend the Bid Bond shall result in the rejection of the Proposal; the execution of the Bid Bond; the loss of the right to sign the Contract in the event that the Contract has been awarded to the person who will not extend the Bid Bond, and may give rise to a declaration of breach of the Contract in the event that the Contract has been entered into and the Performance Guarantee has not yet been approved.

## Bid Bond insured value

The minimum insured value of the Bid Bond shall be 45,254 current legal monthly minimum wages.

## Bid Bond Coverage

The Bid Bond will cover the damages derived from the failure to comply with the Proposal in the event that the Bidder is awarded the contract. For the purposes of this numeral, it shall be understood that there is non-compliance on the part of the Awardee in the following events:

1. Failure to sign the Contract without just cause on behalf of the selected Bidder, in the terms and deadlines established in this Tender Document.

1. The non-extension of the term of the Bid Bond when the term foreseen in this Tender Documen for the Award of the Contract or for the execution of the Contract is extended, provided that such extensions do not exceed three (3) months.
2. The failure of the Awardee to provide the Performance Guarantee required in the Operation Contract by the MinTIC to cover the performance of the obligations of the Contract, with full conditions and requirements as applicable, as provided herein and as required by the Contract and Applicable Law.
3. The fulfillment of the requirements established in the Contract for the subscription of the Execution Beginning Act.
4. Withdrawal of Proposals after the Closing Date.
5. The constitution of a branch under the terms of the numerals 5.1.2.1 and 10.5 of this Tender Document, in the event that the Individual Bidder or any of the members of the Plural Bidder is a juridical person without domicile or branch in Colombia.

The total value of the Bid Bond shall be payable when there is a breach of any of the aforementioned obligations and, consequently, any of the aforementioned claims is submitted.

In order for the Bid Bond to be effective, it shall be sufficient for the MinTIC to present a firm administrative act declaring the failure of the Bidder, the Awardee or the Contractor, as the case may be.

# Certification of Social Security Payments and Legal Contributions

In compliance with the provisions of Article 23 of Law 1150 of 2011, the Bidder, or the members of the Plural Bidder of Colombian or foreign nationality domiciled in Colombia, must present a certification in accordance with Annex 6 - Social Security Payments and Legal Contributions, issued by the statutory auditor, when the latter exists, in accordance with the requirements of the Law, by the legal representative, when no statutory auditor is required, or by the natural person, when he or she is of such quality, where the payment of his or her contributions is certified, being a natural person, and from his or her employees to the health systems, professional risks, pensions and contributions to the Family Compensation Funds, the Colombian Family Welfare Institute (ICBF) and the National Learning Service (SENA) in the six (6) months prior to the date when the certification is issued.

The date of issue of this certificate may not exceed one (1) month from the Closing Date of this Tender.

In the case of Plural Bidders, each of its members must individually comply with this requirement.

The bidding natural person must fill in Annex 6 - Social Security Payments and Legal Contributions, certifying the payment of their contributions and that of their employees to the health systems, occupational risks, pensions and contributions to the Family Compensation Funds, the Colombian Family Welfare Institute (ICBF) and the National Apprenticeship Service (SENA), under the terms of article 50 of Law 789 of 2002.

In the event that the Bidder does not have staff in charge and therefore is not obliged to pay parafiscal and social security contributions for staff, it must, also under the gravity of oath, indicate this circumstance in Annex 6 - Social Security Payments and Legal Contributions.

When the statutory auditor's certification is submitted, the valid certificate of registration and disciplinary background, in force, issued by the Central Board of Accountants, as well as the photocopy of the professional card of the person signing the certification must be provided.

# Verifications

## Tax Accountable Newsletter

The MinTIC shall verify that the Individual Bidder and each one of the members of the Plural Bidder and their legal representatives are not reported in the last Bulletin of Tax Accountable Persons issued by the Republic General Comptroller Office.

This verification does not apply for foreign legal persons without domicile or branch in Colombia, which must declare that they are not liable for tax for activities carried out in Colombia in the past and that they do not have sanctions in force in Colombia that imply inability to contract with the State.

## Disciplinary background in the Nation Attorney-General’s Office

The MinTIC shall verify that the Individual Bidder and each one of the members of the Plural Bidder and their legal representatives show current sanctions or disabilities in the Certificate of Disciplinary Background issued by the Attorney General's Office. This verification does not apply to foreign legal persons without domicile or branch in Colombia.

## Certificate of judicial record

The MinTIC will verify whether the Individual Bidder and each of the members of the Plural Bidder and their legal representatives have a judicial record reported on the website [www.policia.gov.co](http://www.policia.gov.co). This verification does not apply to foreign legal persons without domicile or branch in Colombia.

## Consultation of infringements - National Registry of Corrective Measures System RNMC

The MinTIC will verify if the Individual Bidder and each one of the members of the Plural Bidder and their legal representatives register infractions to Law 1801 of 2016, in the National Registry of Corrective Measures (RNMC) System, in the following link <https://srvpsi.policia.gov.co/PSC/frm_cnp_consulta.aspx>. This verification does not apply to foreign legal persons without domicile or branch in Colombia.

# TECHNICAL CHARACTERISTICS OF THE NETWORK, TECHNICAL PROPOSAL AND ACCREDITATION OF ADDITIONAL SCORING AND TIEBREAKER FACTORS

The Technical Proposal and all the documents necessary for the accreditation of the technical characteristics of the network required in the numeral 7.1 and those necessary for the accreditation of the factors indicated in the numerals 7.3, 7.4, and 7.5 of this Tender Document shall be submitted by the Bidders no later than the Closing Date through SECOP II, together with the other documents through which the Qualifying Requirements and the Additional Requirements are accredited.

# TECHNICAL FEATURES OF THE NETWORK

The Bidder must accredit the following technical characteristics of the network:

1. Demonstrate that it has security systems for domain name registration systems, including at least one thousand (1,000) Zones registered in DNSSEC. The foregoing must be accredited via submission of Annex 9, and to define if a zone is registered in DNSSEC, the reports published in <https://stats.dnssec-tools.org/#summary>and/or <https://www.statdns.com> will be consulted. To accredit the status of TLD Operator, IT must submit certification issued by the authority of the country, if accrediting ccTLD, or certification issued by ICANN, if accrediting gTLD, signed in any case by the one who has powers to issue it; and
2. Demonstrate that it has a DNS system for the operation of TLDs, with Exchange Points in the five (5) continents with a minimum of twenty (20) locations. In order to accredit the above, when the network is its own, whoever accredits the condition must present certification under oath, signed by its legal representative or attorney-in-fact and, in any case, by its statutory auditor or independent auditor, in which the basic description of the DNS system for TLD operation and the locations of the Exchange Points are indicated. In addition, the auditor or fiscal reviewer must present a report certifying: i) that the accredited information was delivered to the auditor or statutory auditor to fulfill his audit function and ii) that the accredited information corresponds to the reality. These certificates must have been issued within thirty (30) days prior to the Closing Date.

When the network is contracted with third parties, the person accrediting the condition must present certification issued by the third party network provider, indicating the basic description of the DNS system for TLD operation and the locations of the Exchange Points, or a copy of the contracts, service orders or any other document concluded between the person accrediting the condition and the provider, evidencing the provision of the service. Such certification must have been issued within thirty (30) Days prior to the Closing Date and must also indicate Identification and position of the person empowered to issue it, contact details of the person certifying it (telephone, e-mail and address) or failing that, the bidder may provide the contact details in Annex 9.

The accreditation of the technical features of the network is subject to the following rules:

* Both technical features of the network must be accredited by a single company.
* The network technical features must be accredited by the Individual Bidder or by the member of the Plural Bidder who has at least forty percent (40%) of participation in the Plural Structure.
* The accreditation of the technical features of the network described in the present numeral may be done directly or through parent companies, subsidiaries or subordinates of the Bidder or of the member of the plural Bidder who has the required participation, in the terms of the numeral 5.4.2 of this Tender Document. In this case, the company that accredits these characteristics must subscribe the Annex 12 – Guarantee Agreement.
* The accreditation of the technical features of the network described in this numeral shall not be subject to score. Consequently, it may be corrected in accordance with the rules indicated in the numeral 3.2 of this Tender Document.

# Contents of the technical proposal

The Bidder shall indicate in Annex 9 - Technical Proposal the Service Levels it is committed to comply with during the execution of the Operation Contract, in accordance with the alternatives (A, B or C) indicated below for each service and indicator:

|  |  |  |  |
| --- | --- | --- | --- |
| **1. DNS Service** | **Alternative A**  |  **Alternative B**  | **Alternative C**  |
| 1.1 DNS Name Server Availability | 99% | 99.9% | 100% |
| 1.2 DNS update time less than <= 60 minutes | 95% | 98% | 99.9% |
| 1.3 Round-trip time (RTT) % of queries processed in <= 500 ms | 95% | 98% | 99.9% |
|   |   |   |   |
| **2. RDDS/Whois Service** | **Alternative A**  | **Alternative B** | **Alternative C** |
| 2.1 RDD/Whois Service Availability | 98% | 99% | 100% |
| 2.2 Server Round-trip time (RTT) % of queries processed in <= 2 s | 95% | 98% | 100% |
| 2.3 Server Round-trip time (RTT) % of changes processed in <= 60 minutes  | 95% | 98% | 100% |
|   |   |   |   |
| **3. EPP Service** | **Alternative A**  | **Alternative B** | **Alternative C** |
| 3.1 EPP Service Availability | 98% | 99% | 100% |
| 3.2 Server Round-trip time (RTT) % of queries processed in <= 2 s | 90% | 95% | 100% |
| 3.2 Server Round-trip time (RTT) % of changes processed in <= 2 seconds  | 90% | 95% | 100% |
|  |   |   |   |

The Technical Proposal shall be subject to the following rules:

* The Technical Proposal shall only be admissible if the Bidder accredits the factors required in numeral 7.1 of this Tender Document.
* The Technical Proposal shall be made through the presentation of Annex 9 signed by the legal representative of the Bidder. By subscribing Annex 9, the Bidder declares that it accepts that the values indicated for each service and indicator shall be incorporated in Technical Appendix 2 of the Operation Contract, which shall be complied with during the execution of the Operation Contract.
* The non-submission of the Technical Proposal described in this numeral will lead to the rejection of the Proposal.
* In the event that any or all of the boxes in the Service Levels table in Attachment 9 are not completed by the Bidder, no score will be assigned for that indicator. Notwithstanding the foregoing, should the Bidder who incurred in the omission be the Awardee, it shall be obliged to comply with the minimum value indicated in alternative A of this numeral 7.2 for the not completed indicator, which will be reflected in Technical Appendix 2 of the Operation Contract.

# SUPPORT FOR DOMESTIC INDUSTRY

## Domestic Individual Bidders or Plural Bidders

In accordance with Law 80 of 1993, Law 816 of 2003 and Decree 1082 of 2015, Bidders of domestic goods and services are considered those provided by companies constituted in accordance with national legislation, by Colombian individuals or by residents in Colombia.

Likewise, in compliance with the principle of reciprocity, in the present Selection Process treatment of domestic goods and services will be granted to those of foreign origin that comply with any of these conditions:

1. Suppliers, goods and services coming from States with which Colombia has Trade Agreements, in the terms established in such Trade Agreements;
2. Goods and services coming from States with which there is no Trade Agreement but in respect of which the national Government has certified that the suppliers of National Goods and Services enjoy national treatment, based on the revision and comparison of the regulations regarding purchases and public contracting of said State (situation that must be certified by the Ministry of Foreign Affairs in the terms described in Decree 1082 of 2015); and
3. To services rendered by bidders who are members of the Andean Community of Nations, taking into account the Andean regulations applicable to the matter.

Fo rthe purposes of literal a) of this numeral 7.3.1 of this Tender Document, the following Trade Agreements are applicable to the Selection Process:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **TRADE AGREEMENT** | **MINTIC INCLUDED** | **BUDGET OF THE CONTRACTING PROCESS SUPERIOR TO THE TRADE AGREEMENT** | **EXCEPTION APPLICABLE TO THE CONTRACTING PROCESS** | **CONTRACTING PROCESS COVERED BY THE TRADE AGREEMENT** |
| Pacific Alliance | Chile | YES | YES | NO | YES |
| Mexico | YES | YES | NO | YES |
| Peru | YES | YES | NO | YES |
| Canada  | YES | YES | NO | YES |
| Chile  | YES | YES | NO | YES |
| Korea  | YES | YES | NO | YES |
| Costa Rica  | YES | YES | NO | YES |
| EFTA States  | Iceland | YES | YES | NO | YES |
| Liechtenstein | YES | YES | NO | YES |
| Norway | YES | YES | NO | YES |
| Switzerland | YES | YES | NO | YES |
| United States  | YES | YES | NO | YES |
| Mexico  | YES | YES | NO | YES |
| Northern Triangle  | El Salvador | YES | YES | NO | YES |
| Guatemala | YES | YES | NO | YES |
| Honduras | NO | YES | NO | NO |
| European Union | YES | YES | NO | YES |

## Foreign Individual Bidders or Plural Bidders

Individual Bidders of a nationality other than those indicated in the above numeral. 7.3.1, as well as the Plural Bidders who have a member of a nationality other than those indicated in said numeral, may offer the incorporation and permanence of Colombian Personnel during the execution of the Contract corresponding to the Director defined in the Contract and obtain the score indicated in the numeral 9.9.3.2, by filling in Annex 8 - Local Component, which must be signed by the Individual Bidder or its legal representative, or the common representative of the Plural Bidder and by the professional to be hired.

This Annex must be accompanied by the identity card and professional card of the professional who signs it.

# ACCREDITATION OF WORKERS WITH DISABILITIES

Those Bidders who wish to accredit the employment of disabled workers in their personnel plant, in accordance with article 1st of Decree 392 of 2018, modifying article 2.2.1.2.4.2.6 of Decree 1082 of 2015, must complete Annex 7 - Employment of Persons with Disabilities and comply with the conditions described below:

1. The Individual Bidder and the member(s) of the Plural Bidder who contribute at least forty percent (40%) of the Experience required in the numeral 5.4 may accredit this requirement. To such effects, it shall be understood that at least forty percent (40%) of the experience shall be accredited by those who accredit at least two (2) of the requirements established in numeral 5.4.
2. The legal representative of the Individual Bidder or the member(s) of the Plural Bidder or the statutory auditor, as applicable, must certify the total number of workers associated with the Bidder's staff or members as of the Closing Date.

1. The minimum number of persons with disabilities on the payroll of the Individual Bidder or member(s) of the Plural Bidder shall be accredited by means of the certificate issued by the Ministry of Labour in force on the Closing Date.

In any case, with the submission of the Proposal, the Bidder undertakes to maintain the same number of disabled personnel accredited with its Proposal, during the execution of the Contract and until its termination.

# MSME QUALITY ACCREDITATION

For the effects indicated in the numeral 10.2d) of this Tender Document, the Individual Bidders or members of Plural Bidders who have domicile in Colombia must accredit their quality as MSMEs through the presentation of their RUP certificate, in which they are registered and signed at the Closing Date that the same holds such quality.

Likewise, the Bidder who wishes to accredit the circumstance foreseen in paragraph iii) of the numeral 10.2e) of this Tender Document, must present a certification subscribed by the legal representative or representative of the Plural Bidder, under oath.

# FINANCIAL PROPOSAL

The Financial Proposal shall be made in Annex 10 - Economic Proposal, and shall be presented by the Bidders on the Tender Closing Date in hardcopy in the envelope of Financial Proposal, in accordance as indicated in the numeral 4.2.2 of this Tender Document. When completing Annex 10 - Financial Proposal, the Bidders shall take into account that the calculations of the financial aspects of the Contract shall cover and include all expenses, utilities, taxes, parafiscal charges, direct and indirect costs of the supplies and works necessary to fulfill the object of the Contract and all obligations, including the assumption of risks arising therefrom.

When formulating the Financial Proposal, the Bidder accepts to be responsible for all taxes, rates and contributions established by the different national, departmental or municipal authorities and, within these same territorial levels, the taxes, rates and contributions established by the different authorities.

The technical estimates made by the Stakeholders for the submission of their Proposals must take into account that the execution of the Contract will be governed entirely by the provisions of the Process Documents and that their economic calculations they must include all the aspects and requirements necessary to comply with each and every one of the contractual obligations, as well as assume the risks foreseen in said documents.

# CONTENTS OF THE FINANCIAL PROPOSAL

The Financial Proposal corresponds to the Remuneration Factor, by means of which the economic consideration the Registry Operator is entitled is calculated, understood as a percentage of the Gross Income of the Operation Stage caused monthly.

This value must be submitted as a percentage (%) less than or equal to seventy-four percent (74%), without decimal numbers. For the calculation of the Remuneration Factor, the Tenderer must consider all the components of the formula for calculating the Remuneration provided in Annex 11. − Contract, as well as all the costs and discounts indicated in the Contract; the taxes, fees and contributions, other tax and other costs of any other nature involved in the conclusion and execution of the Contract.

The MinTIC will grant the maximum score indicated in the numeral 9.9 to the Financial Proposal of the Able Proposal that offers the percentage of least value, as indicated in the numeral 9.9.2 of this Tender Document.

# CLOSURE OF THE TENDER AND EVALUATION OF PROPOSALS

##

# Delivery of Proposals

Proposals must be submitted on the Closing Date indicated in the schedule contained in numeral 2.2 of this Tender Document, until 3:00PM. The official time will be controlled by the SECOP II platform.

The documentation corresponding to the Qualifying Requirements, the Additional Requirements, the technical features of the network demanded in the numeral 7.1, the Technical Proposal and the documents for the accreditation of the factors indicated in the numerals 7.3, 7.4, and 7.5 of this Tender Document, shall be presented through the SECOP II platform, while the Economic Proposal shall be presented in physical form in a sealed envelope, in accordance with the provisions of numeral 4.2.2 of this Tender Document. All documentation must be submitted before the time indicated in this numeral.

Proposals submitted after the Closing Date and the time indicated above will not be accepted, nor in places or conditions different from those foreseen in this Tender Document. The MinTIC will not receive and/or open or evaluate any Proposal that has not been submitted through the SECOP II process hyperlink prior to the Closing Date.

In the event that there is a failure or unavailability in the SECOP II platform at the stage of submission of the Proposals, the procedure established in the Protocol for SECOP II Unavailability shall be followed, according to which:

1. The Stakeholder that cannot access SECOP II or detects any unavailability to present its Proposal, should send an e-mail to dominio@mintic.gov.co, manifesting its impossibility to present the Proposal. The e-mail message shall contain: i) the number of the Selection Process, ii) the name of the platform user, iii) the name of the account of the Stakeholder that wishes to submit the Proposal, the NIT or ID of the Stakeholder, iv) the ticket number of the service table of Colombia Compra Eficiente.
2. Within sixteen (16) business hours after the Closing Date, the MinTIC will receive the Proposals in the e-mail: dominio@mintic.gov.co.
3. The Proposal will be accepted provided that: i) there is a response to the service desk ticket of Colombia Compra Eficiente certifying the unavailability of SECOP II at the time of submission of the Proposal, ii) the Stakeholder has sent the e-mail referred to in numeral i. above.

The MinTIC will accept the Proposals that have complied with the requirements indicated in the previous numerals, will load them to SECOP II and will publish the corresponding minutes with the list of Bidders.

The aforementioned e-mail has been provided by the MinTIC only for the purpose of attending an event of unavailability of SECOP II, in the terms described in this numeral. In no case will this mail attend consultations, observations, clarifications, nor will it serve as a means for the presentation of Proposals when SECOP II is available.

# REVIEW OF PROPOSALS SUBMITTED THROUGH SECOP II

From the date and time the deadline for submission of Proposals expires, the MinTIC will review using the SECOP II platform the information of all submitted Proposals. The foregoing, except for the Financial Proposal which shall be kept and guarded, in accordance with what is indicated in the numeral 9.3 below.

# GUARDIANSHIP AND CUSTODY OF FINANCIAL PROPOSAL ENVELOPES

The Financial Proposal envelopes will be sealed by the MinTIC with adhesive tape that allows writing on its surface, in the union of the closure of the sealed envelope with the back of this one. MinTIC officials designated for the evaluation of the Proposals will sign on this tape. In addition, a representative of the Bidder submitting the Proposal corresponding to the said sealed envelope shall affix his signature on the adhesive tape.

Once the tape has been placed on each of the envelopes and these have been signed by the respective officials, the MinTIC will take the necessary measures to guard and keep in reserve the envelopes of the Financial Proposals received, until the Awarding taking place, at which time the evaluation of the Financial Proposal will be carried out, in accordance with the rules set forth in this Tender Document.

# RESERVE OF THE EVALUATION AND PUBLICITY OF THE PROPOSALS

The information related to the analysis, evaluation and comparison of the Qualifying Requirements, of the Additional Requirements, of the network features demanded in the numeral 7.1, of the Technical Proposal and of the documents for the accreditation of the factors indicated in the numerals 7.3, 7.4, and 7.5 shall be contained in the evaluation report and may not be disclosed to the Bidders or to any other person not officially participating in the Bid until the MinTIC publishes the preliminary evaluation report in SECOP II, so that the Bidders may submit observations, in accordance with the provisions of this Tender Document.

Once the preliminary evaluation report is published, the MinTIC will publish on the SECOP II platform the information of the Proposals received through SECOP II. The foregoing does not include the Financial Proposals that will be received in hardcopy in sealed envelopes and will remain in reserve until the Awarding, as indicated in the numeral. 9.3 of this Tender Document.

# Evaluation of Proposals

The evaluation of the Proposals will be divided into two phases, as outlined below:

1. **Phase 1:** During Phase 1, the Qualifying Requirements, the Additional Requirements, the technical characteristics of the network demanded in numeral 7.1 will be verified and the Technical Proposal and the documents for the accreditation of the factors indicated in the numerals 7.3, 7.4, and 7.5 will be evaluated, as received via SECOP II.

This first phase will be developed by the Assessment Committee, in the terms indicated in the numeral 2.2 of this Tender Document. In this phase, the Able Proposals will be determined and the score corresponding to the Technical Proposal, to the support to the national industry and to the Bidders with workers with disabilities will be granted, in accordance with what is indicated in the numerals 9.9.1, 9.9.3, and 9.9.4 of this Tender Document, respectively.

Phase 1 will culminate in the issuance of the definitive evaluation report.

1. **Phase 2**: Phase 2 will correspond to the evaluation of the Financial Proposal, which will be developed in the Awarding Hearing, during which the envelopes of the Financial Proposal of the Able Proposals will be opened and the financial evaluation will be carried out in the same public act, following for such purposes what is indicated in the numeral 9.9.2 of this Tender Document.

# Verification of Information

During the term of evaluation of the Proposals, the MinTIC shall carry out the verifications of the information provided by the Bidders that it deems convenient and necessary. This verification will be done at its own initiative by the MinTIC. If the hints provided by the Bidders to verify the information is not appropriate or the contact person(s) no longer work on site or for any reason the MinTIC cannot contact such persons to verify the information, the MinTIC may disregard the information that the Bidder intends to credit if it has not been able to verify the information by other means to its satisfaction.

# EVALUATION REPORT AND OBSERVATIONS

On the date established in the Schedule provided for in numeral 2.2 of this Tender Document the MinTIC will publish the preliminary evaluation report of the documents and information of the Qualifying Requirements, the Additional Requirements, the Technical Proposal and the documents for the accreditation of the factors indicated in the . CAPÍTULO 7 of this Tender Document.

During the five (5) Business Days following the publication of the preliminary evaluation report, the Bidders may make the observations they consider and deliver the documents and information requested by the MinTIC. In the exercise of this power, the Bidders may not complete, add to, modify or improve their Proposals.

The MinTIC will publish in SECOP II the observations to the preliminary evaluation report and the documents and clarifications received through said platform within the term established in the Schedule foreseen in numeral 2.2 of this Tender Document, so that the Bidders may pronounce on the matter, within the interval indicated in the same Schedule.

The MinTIC shall publish the final evaluation report on the date indicated in the Schedule provided in numeral 2.2 of this Tender Document or at the latest in the course of the Awarding Hearing.

In the Awarding Hearing the Bidders may present observations to the final evaluation report and these must be resolved in the same, without this implying a new opportunity to remedy.

# Extension of the Evaluation term

In any case, whenever the needs of the administration so require, the MinTIC may modify the terms of the Schedule established in numeral 2.2 of this Tender Document.

# Criteria for Evaluation of Proposals

Able Proposals will be scored according to the following criteria:

$$PTi=PE+ PT+AIN+TD$$

|  |  |
| --- | --- |
|  **Evaluation Factor** | **Maximum Score** |
| Pti: Total score of the Proponent i | **100** |
| PE: Financial Proposal | 70 |
| PT: Technical Proposal | 19 |
| AIN: Score due to support for domestic industry | 10 |
| TD: Score due to Disabled workers | 1 |

## Evaluation of Technical Proposal

The Technical Proposal will be scored according to the following values of alternatives A, B and C for each service and Service Level indicator:

|  |  |  |  |
| --- | --- | --- | --- |
| **1. DNS Service** | **Points for Alternative A**  | **Points for Alternative B** | **Points for Alternative C**  |
| 1.1 DNS Name Server Availability | 2.28 | 2.57 | 2.85 |
| 1.2 DNS update time less than <= 60 minutes | 2.28 | 2.57 | 2.85 |
| 1.3 Round-trip time (RTT) % of queries processed in <= 500 ms | 0.76 | 0.86 | 0.95 |
|   |   |   |   |
| **2. RDDS/Whois Service** | **Points for Alternative A**  | **Points for Alternative B** | **Points for Alternative C** |
| 2.1 RDD/Whois Service Availability | 2.28 | 2.57 | 2.85 |
| 2.2 Server Round-trip time (RTT) % of queries processed in <= 2 s | 0.76 | 0.86 | 0.95 |
| 2.3 Server Round-trip time (RTT) % of changes processed in <= 60 minutes  | 0.76 | 0.86 | 0.95 |
|   |   |   |   |
| **3. EPP Service** | **Points for Alternative A**  | **Points for Alternative B** | **Points for Alternative C** |
| 3.1 EPP Service Availability | 3.80 | 4.28 | 4.75 |
| 3.2 Server Round-trip time (RTT) % of queries processed in <= 2 s | 1.52 | 1.71 | 1.90 |
| 3.3 Server Round-trip time (RTT) % of changes processed in <= 2 seconds  | 0.76 | 0.86 | 0.95 |

The values in the above table are calculated with two decimal places. In any case, the maximum value of the Technical Proposal shall be nineteen (19) points and the minimum value of the Technical Proposal shall be fifteen (15) points. The Technical Proposal not obtaining the minimum value indicated above will be rejected.

## Evaluation of Financial Proposal

The Financial Proposal described in the CAPÍTULO 8, corresponding to the Remuneration Factor indicated in Appendix 10, shall be evaluated in accordance with the following criteria, exclusively for those Proposals that meet the following criteria: (i) the Qualifying Requirements; (ii) the Additional Requirements; (iii) the technical features of the network required in the numeral 7.1 of this Tender Document and (iv) the minimum score in the Technical Proposal, required in the numeral 9.9.1 of this Tender Document:

1. The envelopes of the Able Proposals that comply with what is indicated in this numeral 9.9.2 shall be opened and the values indicated in each one for the Financial Proposal shall be read.
2. The values of the Financial Proposal will be consigned in a board or projection aimed to such effects.
3. In the event that there is one (1) Able Proposal that complies with the provisions of this numeral 9.9.2 and its Financial Proposal complies with the requirements in the CAPÍTULO 8 of this Tender Document, the Public Tender shall be awarded to the Bidder that submitted said Proposal.

## Lower limit

1. If there is more than one (1) Able Proposal that complies with the provisions of the numeral 9.9.2, once the values of the Financial Proposals of the said Proposals have been entered on the board or in the projection intended for such purposes, the lower limit shall be calculated as eighty percent (80%) of the mean, as follows:

Lower limit = 80%\*X

Where

|  |  |
| --- | --- |
| X | Value of the central tendency measure resulting from the application of the procedure described in the Section c) |

1. Proposals whose Financial Proposal is less than the lower limit will be rejected.
2. In order to select the central tendency measure to be applied, a draw will be made in the audience among the following alternatives: Arithmetic Media - Median (Alternative 1), Arithmetic Media (Alternative 2), or Adjusted Geometric Media (Alternative 3). For this purpose, the central tendency measure shall be selected from the value of the units and tenths of the TRM in force on the day of the Awarding Hearing, as well:

00 to 33: Alternative 1

34 to 66: Alternative 2

67 to 99: Alternative 3

* + - * 1. **Arithmetic Mean with Median**: It consists of the determination of the arithmetic average of the Able Proposals. that comply with what is indicated in the numeral 9.9.2, including the median, in accordance with the following methodology.

(i).1 The Values of the Financial Proposals of the Able Proposals that comply with what is indicated in the numeral 9.9.2, shall be sorted in ascending order (from lowest to highest); their median shall be calculated as the intermediate value of the series in the case of a series with an odd number of elements, or the simple average of the two central values in the case of a series with an even number of elements.

(i).2 Once the median has been calculated, the arithmetic mean of the Financial Proposals of the Able Proposals that comply with what is indicated in the numeral 9.9.2 will be calculated, that is, the result of the sum of the Financial Proposals of said Proposals, divided by the total number of Financial Proposals, according to the following formula:

$$\overline{X}=\frac{\sum\_{i=l}^{n}P\_{i}}{N}$$

Where

|  |  |
| --- | --- |
| $$\overline{X}$$ | Arithmetic mean.  |
| $$P\_{i}$$ | Value of each one of the Financial Proposals, of the Able Proposals that comply with what is indicated in the numeral 9.9.2.  |
| N | Quantity of the Financial Proposals, out of the Able Proposals that comply with what is indicated in the numeral 9.9.2.  |

Once the median and the arithmetic mean have been calculated, the Arithmetic Mean with Median will be calculated according to the following formula:

$$X=\frac{\overline{X}+Me}{2}$$

Where

|  |  |
| --- | --- |
| X | Value of the Arithmetic Mean with Median, in case the selected alternative is the Arithmetic Mean with Median. |
| $$\overline{X}$$ | Arithmetic mean.  |
| Me | Median obtained from the value of the Financial Proposals, of the Able Proposals that comply with what is indicated in the numeral 9.9.2.  |

* + - * 1. **Arithmetic Mean:** It consists of determining the arithmetic mean of the total value of the Financial Proposals of the Able Proposals. that comply with what is indicated in the numeral 9.9.2, according to the following formula:

$$X=\frac{\sum\_{i=1}^{N}P\_{i}}{N}$$

 Where

|  |  |
| --- | --- |
| X | Value of the Mean, in case the selected alternative is the Arithmetic Mean.  |
| Pi | Value of each one of the Financial Proposals, of the Able Proposals that comply with what is indicated in the numeral 9.9.2.  |
| N | Quantity of the Financial Proposals, out of the Able Proposals that comply with what is indicated in the numeral 9.9.2.  |

* + - * 1. **Adjusted Geometric Mean**: It consists of the determination of the adjusted geometric mean according to the following formula:

$$X=\sqrt[(m+n)]{VO^{m }\* P\_{1}\* P\_{2}\*P\_{3}…\*P\_{n}}$$

 Where

|  |  |
| --- | --- |
| X | Value of the central tendency measure, in case the selected alternative is the Adjusted Geometric Mean.  |
| P | Value of each one of the Financial Proposals, of the Able Proposals that comply with what is indicated in the numeral 9.9.2.  |
| n | Quantity of the Financial Proposals, out of the Able Proposals that comply with what is indicated in the numeral 9.9.2.  |
| VO | Maximum value of the Financial Proposals. |
| m | Number of times the maximum value VO of the Financial Proposals will be included. For every three (3) Financial Proposals the maximum value VO of the Financial Proposals used shall be included once, as follows If 2 ≤ n ≤3, m=1; If 3 < n ≤ 6, m=2;If 6 < n ≤9, m=3; If n=10, m=4.  |

## Financial Proposal Score

1. The maximum score (70 points) shall be awarded to the Financial Proposal that, after applying the procedure described in the previous numeral 9.9.2.1, has not been rejected, and that offers the Remuneration Factor of lesser value:

$$FR\_{min}=Mínimo\left(FR\_{1},FR\_{2},FR\_{3},…,FR\_{m}\right)$$

Where:

$FR\_{i}$ is the Remuneration Factor of each one of the Financial Proposals “i”

*m* is the total number of the Financial Proposals, out of the Able Proposals that comply with what is indicated in the numeral 9.9.2.

$FR\_{min}$ is the Remuneration Factor of the Financial Proposal with the lowest value.

1. The following formula shall be assigned to the other Economic Proposals that, having applied the procedure described in the previous numeral 9.9.2.1, have not been rejected:

$$Score\_{i}=\frac{70\*FR\_{min}}{FR\_{i}}$$

Where:

$Puntaje\_{i}$ is the score granted to Financial Proposal “i”

$FR\_{i}$ is the Remuneration Factor of the Financial Proposal “i”.

$FR\_{min}$ is the Remuneration Factor of the Financial Proposal with the lowest value.

## Score due to support for domestic industry

In order to support the domestic industry through the public procurement system, the evaluation will assign a maximum score of TEN (10) points to the Bidders, according to the following criteria:

## Score for Domestic Individual Bidders or Plural Bidders

The Individual Bidders of Colombian nationality or those of foreign nationality of the countries indicated in the table included in the numeral 7.3.1 or those in which Colombian services are given national treatment (a situation that must be certified by the Ministry of Foreign Affairs in the terms described in Decree 1082 of 2015), and Plural Bidders whose members are all of the nationalities described above, will obtain a score for support to the domestic industry of TEN (10) points.

This quality shall be verified by the MinTIC from the information indicated in the numeral 7.3.1 of this Tender Document and the certificates issued by the Ministry of Foreign Affairs on the basis of the provisions of Decree 1082 of 2015 and published in the SECOP II.

## Foreign Individual Bidders or Plural Bidders

Individual Bidders of a nationality other than those indicated in the numeral 9.9.3.1 above, as well as Plural Bidders who have a member of a nationality other than those indicated in said numeral, they shall not be entitled to the score indicated in the numeral. 9.9.3.1 above, but, if they offer Colombian personnel in the terms indicated in the numeral 7.3.2 of this Tender Document, will obtain FIVE (5) points in the criterion of score due to support for domestic industry.

## Additional score for Bidder with workers with disabilities

In order to encourage the employment of workers with disabilities, a score of one (1) point shall be awarded to those Bidders who accredit hiring disabled workers in their personnel plant, in accordance with the conditions indicated in numeral 7.4 of this Tender Document and in accordance with the minimum number of workers with disabilities, indicated in article 1 of Decree 392 of 2018, modifying article 2.2.1.2.4.2.6 of Decree 1082 of 2015, summarized in the following table:

|  |  |
| --- | --- |
| **Total number of workers in the Bidder's payroll** | **Minimum required number of workers with disabilities** |
| Between 1 and 30 | 1 |
| Between 31 and 100 | 2 |
| Between 101 and 150 | 3 |
| Between 151 and 200 | 4 |
| More than 200 | 5 |

## Determination of the order for eligibility

1. Based on the results obtained when assigning scores, the MinTIC will rank Proposals from highest to lowest score. The Proposal with the highest score will be awarded the Selection Process.
2. For the purposes of establishing the order for eligibility of the Proposals, only those Proposals whose Financial Proposals are considered valid under the terms of this Tender Document will be taken into account.

# AWARDING HEARING AND SUBSEQUENT PROCEEDINGS

# Awarding Hearing O DECLARATION AS VOID

The awarding of the Contract will be made through a public hearing that will be carried out in accordance with the terms of numeral 10 of article 30 of Law 80 of 1993 and article 2.2.1.2.1.1.2 of Decree 1082 of 2015. The Hearing for Awarding or Declaration as Void shall be held on the date set forth in the numeral 2.2 of this Tender Document.

At this hearing, the final evaluation report will only be read if it has not been previously published in SECOP II.

During the hearing, each of the Bidder shall be given the floor once, in the same order in which the Proposals were submitted, to pronounce on the responses given by the MinTIC to the observations presented with respect to the preliminary evaluation report. Each of the Bidders shall designate a single spokesperson, acting as legal representative or attorney-in-fact, who may perform an intervention limited to a maximum of ten (10) minutes. At the end of this term, the audio amplification will be cut off and the next Bidder will be given the floor.

Once the interventions of all the Bidders with respect to the answers given by the MinTIC to the observations and counter-observations presented with respect to the preliminary evaluation report have ended, each of the Bidders will be given the floor only once, in the reverse order of the submission of the Proposals, in order to replicate the observations on the evaluation of their Proposals that have been presented by the interveners. The Bidders whose Proposal has not been the object of observations shall not have the right to reply. This intervention will have a maximum duration of five (5) minutes per Bidder, at the end of which the amplification of the audio will be cut and the next Bidder will be given the floor.

At the end of the interventions of the Bidders, a break of at least twenty (20) minutes will be made for the MinTIC to analyze the content of the interventions made, which may be extended at the discretion of the MinTIC if deemed necessary.

Once the recess is over and there is no impediment to it, the MinTIC will pronounce on the content of the interventions made and the evaluation of the Financial Proposal will begin. The MinTIC will proceed to open the envelope of the Financial Proposals of the qualified Bidders and will evaluate the Financial Proposal. Subsequently, through the mechanism indicated in the numeral 9.9 the present Tender Document, the order of eligibility will be defined. At the same hearing, the Bidders will be motioned only for the revision of the financial aspect. Each of the Bidders may perform an intervention limited to a maximum time of ten (10) minutes. At the end of this term, the audio amplification will be cut off and the next Bidder will be given the floor.

The Selection Process will be awarded to the Winning Bidder, by means of an administrative act that will be personally notified at the public hearing, and of which it will be read out at the same. That act shall be published in SECOP II.

The awarding act is irrevocable and, therefore, obliges the MinTIC and the Awardee, except for the exceptions contemplated in paragraph 3 of article 9 of Law 1150 of 2007. No appeal may be lodged against this act through government channels.

# Criteria for tiebreaking

A tie between two or more Able Proposals shall be understood to exist when they have an identical evaluation score. In such a case, the MinTIC will apply the criteria defined in Article 2.2.1.1.2.2.9 of Decree 1082 of 2015, as indicated as follows:

1. The Bidder having the highest score in the Financial Proposal shall be preferred, in accordance with the provisions of numeral 9.9.2 of this Tender Document.
2. If the tie continues, the Bidder having the highest score in the Technical Proposal shall be preferred, in accordance with the provisions of numeral 9.9.1 of this Tender Document.
3. If the tie continues, the Bidder having the score for support to the domestic industry indicated in numeral 9.9.3.1 of this Tender Document will be preferred.
4. If the tie persists, the Proposal submitted by an Individual Bidder of Colombian nationality who holds the status of MSME, or by a Plural Bidder made up exclusively of MSMEs of Colombian nationality, shall be preferred. In the event of a tie with a foreign Bidder or with members of foreign origin to whom a trade agreement involving national treatment applies, this tie-breaking criterion shall not apply.
5. If the tie persists, and within the Able Proposals are Plural Bidders made up of at least one national MSMEs, the Proposal presented by the Plural Bidder that is made up of said MSMEs will be preferred, provided that it is the same: i) has a participation greater than or equal to twenty-five percent (25%) in the Plural Structure, ii) contributes, at least, twenty-five percent (25%) of the Qualifying Experience accredited by the Bidder, understood as the accreditation of one (1) of the experiences required in the numeral. 5.4 of this Tender Document, and iii) whose shareholders, partners or legal representatives are not employees, partners or shareholders of the other members of the Plural Bidder (for which, they must attach a certificate signed by their legal representative or Power of Proxy accrediting, under the gravity of oath, such circumstance). In the event of a tie with a foreign Bidder to whom a trade agreement involving national treatment applies, this tie-break criterion shall not be applied.
6. If the tie persists, the Proposal presented by an Individual Bidder who accredits under the conditions established in the Governing Law that, at least ten percent (10%) of its payroll is in a condition of disability referred to in Law 361 of 1997, and that the same has been contracted for a period equal to or greater than one year, counted from the Closing Date, shall be preferred. If the Proposal is submitted by a Plural Bidder, the member of the Plural Bidder who accredits that ten percent (10%) of its payroll is in a condition of disability under the conditions indicated above, must have a participation of at least twenty-five percent (25%) in the Plural Structure and must contribute a minimum of twenty-five percent (25%) of the accredited experience in the Proposal, calculated with the same procedure described in the literal e) above.

The percentage of personnel with disabilities indicated in this numeral shall be accredited by means of the certificate issued by the Ministry of Labor in force on the Closing Date. In any case, with the submission of the Proposal, the Bidder undertakes to maintain the same percentage of disabled personnel accredited with its Proposal, during the execution of the Contract and until its termination.

1. If after applying the above factor the tie continues, the Selection Process shall be awarded by draw via the following procedure, which is understood to have been accepted by the Bidders with the submission of their Proposal: As many ballots as tied Bidders will be placed within a bag. All ballots shall be of the same color except one that will have a different color. The bidders will proceed to extract ballots in alphabetical order by surname or first name or company name in the case of legal entity. The Bidder who extract the ballot of a different color shall be placed in the first place for eligibility.

# Rejection of Proposals

Without prejudice to the provisions of the Governing Law and in other parts of this Tender Document, Proposals which, due to their content, prevent objective selection will be rejected, especially in the following cases:

1. When the Proposal is submitted as subordinated to the fulfillment of any condition or modality.
2. When the Proposal is submitted out of time or is not submitted through the SECOP II platform, as set forth in numeral 4.2.1 of this Tender Document or in accordance with the mechanism indicated in numeral 9.1, where such a mechanism is applicable.
3. When the Financial Proposal is not presented in physical form in accordance with what is indicated in the numeral 4.2.2 of this Tender Document.
4. When several Proposals are submitted with the same person (natural or juridical, national or foreign) appearing as a member of two or more Individual or Plural Bidder, in which case the MinTIC will only evaluate the first Proposal that has been submitted in time. All other Proposals will be rejected.
5. When i) several companies controlled by the same parent company, ii) a company and its parent company, iii) companies belonging to the same business group or iv) several natural persons that have a relationship of consanguinity or affinity up to the second or first civil degree, appear as members of two or more Individual or Plural Bidders, in which case the MinTIC will only evaluate the first Proposal that has been presented in time. All other Proposals will be rejected.
6. When the Proposal does not contain the Technical Proposal provided for in numeral 7.2 of this Tender Document or when the Technical Proposal does not obtain the minimum score required in the numeral 9.9.1 of the Tender Document.
7. When the Proposal does not contain the Financial Proposal signed by the legal representative; or the Annex 10 - Financial Proposal does not contain the value of said Financial Proposal or when more than one Financial Proposal is submitted in the physical envelope of the Financial Proposal.
8. When the Financial Proposal exceeds the limit foreseen in the numeral 8.1 of the Tender Document or when the Financial Proposal is less than the lower limit provided in numeral. 9.9.2.1 of the Tender Document.
9. When it is determined that the Bidder or any of the members of the Plural Bidder is involved in a cause of disability, incompatibility, conflict of interest or prohibition provided in the Colombian law and/or in this Tender Document that prevents them from contracting with the MinTIC.
10. When the Bidder provides untrue, inaccurate information or has altered any document that is part of the Proposal and, in the opinion of the MinTIC, it substantially alters the Selection Process.
11. When the Bidder does not present the Bid Bond along with the Proposal, or does not extend it in the terms provided in this Tender Document.
12. When the Bidder or any of the members of the Plural Bidder is reported in the Tax Accountable Persons issued by the Republic General Comptroller Office.
13. When the legal person Individual Bidder or member of the Plural Bidder is in the situation described in article 38 of Law 1116 of 2006.
14. When the Bidder does not clarify, rectify or contribute documents requested by the MinTIC within the term indicated, in accordance with numeral 3.2 of the Tender Document.
15. When the MinTIC verifies the breach of the anti-corruption commitments assumed by the Bidder, either for violation of said commitments by its employees or representatives or by any of the members of the Plural Bidder.
16. When the entity or person authorizing the expenditure computer determines that the total value of the Proposal is artificially low, in accordance with the provisions of Decree 1082 of 2015, and the explanations given by the Bidder do not satisfy the MinTIC.
17. The others foreseen in the Governing Law.

# Declaration of Void

The MinTIC may declare the Bidding Process void at the expiration of the deadline for awarding, in the following cases:

1. Where no Proposal has been submitted.
2. When none of the Proposals submitted is an Able Proposal.
3. When none of the Proposals achieves the minimum score required in the numeral 9.9.1 of this Tender Document for the Technical Proposal.
4. When, having been submitted Proposals, all are involved in a cause of rejection.
5. When there are causes or reasons that prevent the objective choice of the Bidder.
6. When the legal representative of the MinTIC or its delegate does not accept the recommendation of the Assessment Committee and opts for the declaration of void of the Selection Process, in which case it will have to motivate his decision.
7. In all other cases provided for in the Governing Law.

The Declaration of void for the Tender shall be made by means of a motivated act, which shall be communicated to all the bidders through its publication in SECOP II; being appropriate against the same, the appeal for replacement.

# Contract Signature

The Contract must be signed within maximum fifteen (15) Business Days counted from the notification of the Awarding. Such term may be extended at the discretion of the MinTIC, in accordance with the provisions of paragraph 9 of Article 30 of Law 80 of 1993.

For the signature of the Contract, foreign legal persons without a branch in Colombia that present themselves as Individual Bidder or that are members of the Plural Bidder that is the Awardee, must establish a branch in Colombia, in accordance with the provisions of Title VIII of Book Two of the Commerce Code (Arts. 469 et seq.), taking into account that the subject matter of the present selection process constitutes a permanent activity, according to article 474 of the Commerce Code.

With the submission of the Proposal, the Bidder assumes the obligation to accredit before the MinTIC, within fifteen (15) calendar days following the notification of the Awarding, that the branch has been established.

Except in case of force majeure or fortuitous event, duly proven, if the Awardee refuses to comply with the obligations established in the Tender Document and specifically those of signing and perfecting the Contract within the term indicated, the MinTIC shall give effect to the Bid Bond, without prejudice to the legal actions leading to the recognition of damages caused and not covered by the value of the said guarantee and without prejudice to the inability to contract for a term of five (5) years, in accordance with the provisions of ordinal e) of numeral 1 of article 8, numeral 1st of Law 80 of 1993.

The Contract to be entered into as a result of this Tender shall be subject in its entirety to the provisions of Annex 11 - Minutes of the Contract of this Tender Document (and its Appendices), as amended by means of an Addendum, which sets forth all obligations and rights, as well as the distribution of risks to be assumed by both the Contractor and the MinTIC.

# Awarding to the Bidder Qualified in Second Place

Pursuant to the provisions of numeral 12 of article 30 of Law 80 of 1993, if the Awardee does not sign the Contract for any reason within the term indicated, the MinTIC may, by means of a duly motivated administrative act, award the Contract, within the following fifteen (15) days, to the Second Qualified Bidder, if it considers that its Proposal is equally favorable to the MinTIC.

# Bid Bond Return

The Bid Bond shall not be returned to the Awardee and the second qualified Bidder until the Contract has been signed and the Contract Execution Start Minutes have been signed.

The other Bidders may claim the Bid Bond within fifteen (15) Calendar Days following the Awarding, without requiring prior notice or summons by the MinTIC.