

ORIGINAL

## The official household public service companies and their obligatory to publish their actions in the SECOP

### Las empresas oficiales de servicios públicos domiciliarios y su obligatoriedad de publicar sus actuaciones en el SECOP

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#### ABSTRACT

Residential public service companies have been governed by special regulations in consideration of the goods they offer and based on the assumption that what is relevant is the satisfaction of the users who are the beneficiaries of the services delivered, as contemplated in Law 142. from 1994. Notwithstanding the foregoing, the application of general regulatory provisions to official residential public service companies can be verified, since regulations have been incorporated that are not created for this group of entities and that prevent them from developing adequately in the face of competition. to meet its objectives, as indicated in article 32 ibidem, thus preventing the freedom and loss of management of the provision of the service against private companies and blurring the nature of this group of entities. Thus, this research article will address the issue related to the application of standards for public sector entities to domiciliary public companies and their impact on the provision of the service by this group of organizations punctually the obligation to publish in the SECOP.

**Keywords:** Home Public Services; Special Rule; Advertising; Competition.

#### RESUMEN

Las empresas de servicios públicos domiciliarios se han regido por una normatividad especial en consideración a los bienes que ofertan y partiendo del supuesto que lo relevante es la satisfacción de los usuarios quienes son los beneficiarios de los servicios entregados, tal como se contempla en la Ley 142 de 1994. No obstante lo anterior, se puede verificar la aplicación de disposiciones normativas generales a las empresas de servicios públicos domiciliarios oficiales, pues se han incorporado normas que no están creadas para este grupo de entidades y que les impide desarrollarse de manera adecuada de cara a la competencia para cumplir con sus objetivos, tal como lo indica el artículo 32 ibídem, impidiendo con ello la libertad y pérdida de manejo de la prestación del servicio frente a las empresas privadas y desdibujando la naturaleza de este grupo de entidades. Así, en el presente artículo de investigación se abordará la temática relacionada con la aplicación de normas para entidades del sector públicos a las empresas públicas domiciliarias y su incidencia en la prestación del servicio por parte de este grupo organizaciones, puntualmente la obligación de publicar en el SECOP.

**Palabras claves:** Servicios Públicos Domiciliarios; Norma Especial; Publicidad; Competencia.

## INTRODUCTION

Among the principles of the administrative function, as stated in Article 209 of the Political Constitution of Colombia, is the principle of publicity, which ensures that people know the actions of public entities. Hence, they must give effect to this guarantee through different mechanisms, one of them SECOP.<sup>(1)</sup>

In addition to the above, the acts and contracts developed by public utility companies under Article 32 of Law 142 of 1994 are governed by private law, giving them all the power for their processes to be given both in civil law and commercial law.<sup>(2)</sup> However, the National Agency for Public Procurement wants to establish procedures such as advertising without considering the exceptions that are legally contemplated and what this would imply.<sup>(3)</sup>

It is for this reason that, in this paper, the scope of the publication of the acts of public utility companies of an official nature will be established versus the non-publication of the same acts of private companies in the SECOP platform and, what are the consequences that this would have in a free competition market.<sup>(4)</sup>

This added to the fact that different control agencies, especially the comptrollers' offices, in their eagerness to show results, overlook their competencies and want to raise administrative, fiscal, and even criminal findings for the actions that the Public Utilities Companies develop under the special regime and specifically in Law 142 of 1994, trying to bring their procedures to the different rules established by the laws.<sup>(5)</sup>

Hence, it is important to establish criteria of knowledge both for the officials who exercise control and surveillance as well as for those called to administer justice since it is the latter, through ignorance of the regulations, who impose obligations on this type of companies, abandoning what is regulated by a legal and constitutional mandate. In this sense, the research problem addressed in this article is condensed into the following question: What is the implication of the publication in SECOP of the actions of the official domiciliary public utilities companies?

Thus, the general objective is to determine the implication of the publication of the actions of the official public utilities companies in the SECOP with respect to the free competition of this group of organizations. And the specific objectives:<sup>(6)</sup> Determinar las competencias de Colombia compra eficiente para las empresas que se rigen por el derecho privado.

- Describe the principle of publicity for official public utilities companies and its legal and jurisprudential exceptions.
- To identify the disadvantages and risks of the publication of the actions of the official domiciliary public utilities companies in the SECOP platform.
- In another sense, the hypotheses of this research are the following:
- Official public utilities companies are obliged to publish their actions in the SECOP (Electronic et al.).
- Official public utilities companies should NOT publish their actions in the SECOP.

To conclude, this type of ignorance and actions are significantly detrimental to official public utilities since they put them at a disadvantage compared to the procedures of their peers. In turn, from the methodology proposed, a sociological vision of law is structured since it adds a greater or lesser degree of social effectiveness to the legal norms. Ergo, these studies are connected with the effectiveness of the legal norm that we are told about in the legal experience. Here, we are interested in analyzing whether or not the legal norm is complied with in reality without going into detail about its validity or legitimacy. In this type of research, what is sought is to verify the application of the law, but in real life; therefore, it is a matter of going to reality itself, to the facts in order to discuss, criticize, and reformulate the legal norms.<sup>(7)</sup>

## State of the Art

After checking the databases of different repositories and journals, it was possible to find works such as "Metamorphosis of the State as a Regulatory Entrepreneur: The Case of Domiciliary Public Services in Colombia," which addresses the issue related to the way in which the State is gradually divesting itself of the provision of public services, making a normative account of laws 142 and 143 of 1994.<sup>(8)</sup>

On the other hand, the authors would approach the subject from research entitled "Legal regime of competition in residential, public services," which indicates that the right to competition in the residential public services sector is a direct development of the constitutional mandate contained in Article 333 of the Political Constitution, which imposes on the State the obligation to prevent practices that restrict economic freedom and to prevent or control abusive practices of the dominant position in which the companies that participate in the national market may incur.<sup>(9)</sup>

Meanwhile, researchers pronounced on "The contracting regime of public utility companies, domiciliary of official character," specifying that these regulations have changed substantially since the classic notion of public service began to enter into crisis due to the social, political, and especially economic transformations of the international environment, until today; in which the activity of public service is considered as an economic activity of great social importance.<sup>(10)</sup>

On the other hand, research was conducted on the "Contractual regime in the official public utilities companies," where part of the Political Constitution of 1991 and the legislation issued around it, analyzing whether the contractual regime is applicable to the official public utilities companies conforms to the postulates and principles of free competition, not state monopolies enshrined in the Constitution, which allows them to exercise their activities under similar conditions to other operators of public services or on the contrary, these companies have been imposed regulatory restrictions not applicable to other public utilities companies with different legal nature.<sup>(11)</sup>

An article on "Household public utilities in Colombia: their provision, regulation and control" indicates that household public utilities constitute a special category of public services. They are irreplaceable goods, essential needs of the population linked to the existence, quality, and dignity of human life and, consequently, fundamental rights. They are an economic activity. This paper questions the Colombian model of provision, regulation, and control. It uses a socio-legal and interdisciplinary approach, a theoretical method (analysis and synthesis), and documentary analysis.<sup>(12)</sup>

The authors elaborated research on the "Obligation of industrial and commercial companies of the state to publish their contracting in the SECOP," in which the obligation of industrial and commercial companies of the state to publish their contracting in Colombia Compra Eficiente was studied in depth. All this provides knowledge to the associates about the processes that are carried out for the proper functioning of the administration, which consequently leads to making use of the means of control, as well as to achieving participation and timely knowledge of the interested parties in the contractual processes.<sup>(13)</sup>

A more current article, in which research is done on "¿Colombia compra eficiente frente a las nuevas tecnologías de la información?", studies the creation of SECOP as an Electronic Transactional System in Public Procurement and digital evidence through electronic media. In this way, the need to systematize the contracting process was examined, not only because of the principle of publicity but also because of the technological dynamics that have been generated due to globalization; it was also analyzed whether the administration intends to safeguard the information practically and create reliability in the development of the different modalities of selection of the contracting.<sup>(14)</sup>

### Theoretical Development

In the early 1990s, something happened in Colombia that went unnoticed by most citizens: the State ceased to perform some functions that it had been performing for more than four decades. This is the case of the monopolistic provision of domiciliary public services (water, sewage, electricity, and telecommunications, among others) that were previously provided exclusively by the State and now became functions also of private enterprise: "The State has essentially become a planning, regulating, supervising and controlling agent of the private sector's actions".<sup>(15)</sup>

This simple attitude in the government's actions entails an enormous philosophical and ideological transformation in terms of the actions that the State should carry out in the economy. It is precisely in this area where the need to analyze its new role in the economy arises: a State metamorphosed, first into a welfare State and then into a regulator.<sup>(16)</sup>

It was able to make a change by virtue of the delegation that citizens have granted to this Leviathan, which transforms and adapts itself according to the circumstances that society demands of it, just as it has done this time. In this perspective, the article delves, first, into the metamorphosis that the State has recently undergone, its reasons, implications, and functions; second, it stops to show the nature and motives of the regulatory State; third, it presents concretely the evolution that the Colombian State has presented throughout history in the provision of domiciliary public utilities, an example that serves to illustrate the transformation from entrepreneur to regulator; finally, some conclusions are drawn about what has been stated.<sup>(17)</sup>

Household public utilities constitute a special category of public services. They are irreplaceable goods, essential needs of the population linked to the existence, quality, and dignity of human life and, consequently, fundamental rights. They are an economic activity.<sup>(18)</sup>

The right to competition in the residential public utilities sector is a direct development of the constitutional mandate contained in Article 333 of the Political Constitution, which imposes on the State the obligation to prevent practices that restrict economic freedom and to prevent OR control abusive practices of the dominant position in which the companies that participate in the national market may incur.<sup>(19)</sup>

Having as a normative basis the Political Constitution of 1991 and the legislation issued around it, the proposed analysis intends to determine whether the contractual regime applicable to the official public utilities companies is in accordance with the postulates and principles of free competition, not state monopolies enshrined in the Constitution, which allows them to exercise their activities under similar conditions to the other public utilities operators or on the contrary, regulatory restrictions have been imposed on these companies that are not applicable to other public utilities companies with different legal nature.<sup>(20)</sup>

## Legal Framework

The legal framework for this research work is found in the Political Constitution of Colombia of 1991, which established the framework for the regulation of public utilities, enshrining the principles that guide their provision and giving the legislator the power to formulate the basic rules regarding the nature, extension, and coverage of the public service, its essential character, the subjects in charge of its provision, the conditions to ensure it, the relations with users and the way to exercise inspection, control and surveillance to ensure its efficient provision.<sup>(21)</sup>

Consequently, Law 142 of 1994, "Whereby the regime of domiciliary public utilities is established, and other provisions are set forth," was issued, which regulates everything related to this type of act and from which the specialty in the management of this type of business organization is extracted.<sup>(22)</sup>

## METHOD

The present research work has a qualitative approach. It is based on two types of research: the first is socio-legal, and the second is legal dogmatic, given that the lack of knowledge of the legal operators in relation to the domiciliary public utilities companies and their specialty create function and do not allow the real performance of their original norm, under the understanding that these should be treated as equal to the entities governed by the statute of state contracting, forcing them to follow their procedures.

## RESULTS AND DISCUSSION

### General: nature and legal framework of public utilities.

Within the legal foundations established in the constitution of 1886, which governed during almost the entire twentieth century, the issue of public services was addressed in a very superficial way since it basically referred to the prohibitions directed to the providers from the right to strike.<sup>(23)</sup>

In the same way, under the constitutional reform of 1936, prohibitive actions were included that maintained that public services were deeply involved in the social interest, which should prevail over the particular interest. In the same reform, the State was constitutionally granted the power to intervene in the country's economy. Then, in the 1945 reform, the formal requirements that made it difficult for the Executive to intervene and establish the justice of public service under the responsibility of the nation were obviated.<sup>(24)</sup>

However, it was really only until the 1986 reform that a greater concreteness was achieved in relation to the power of State intervention in the economy, to the point of starting to talk about public services with private characteristics, which could become the object of State intervention. In the same way, the concept of planning was introduced, which was necessarily based on the clear determination of the distribution of competencies among the different state entities, since with this reform, it was possible to define the generic power of intervention in the economy was achieved concretely.<sup>(25)</sup>

In conclusion, the Constitution of 1886 included reforms throughout the twentieth century, which did not regulate tangentially the issue of public services. There was never a specific chapter or an exclusive article for them in the Constitution since, under the Constitution, the provision of public services, their rates, and other regulations were subject to public law provisions; that is, the provision of such services was subject to the control and supervision of the State. It was also empowered to intervene in it.<sup>(26)</sup>

Today, the concept and management of domiciliary public services, i.e., aqueduct, sewerage, sanitation, energy, gas, and basic telephony, is entrusted exclusively to the territorial entities and the Nation, which is recognized as the result of the influence of the French doctrine in Colombian legislation, by virtue of which the State had the monopoly of public services.<sup>(27)</sup>

In this order, the providers of domiciliary public utilities were cataloged at the time of the issuance of the 1991 Constitution and subsequently with Laws 142 and 143 of 1994 as public entities operating under monopolistic conditions, to the point of being considered natural monopolies in domiciliary public utilities due to the indivisibilities and economies of scale in their provision.<sup>(28)</sup>

Therefore, it is concluded that the direct provision by private parties was based on the vetoed practice since they could only have access to it through figures such as concessions, permits, and subcontracting, by virtue of which the State did not divest itself of the ownership of the service but only of its provision; consequently, the State continued to have the power to regulate and oversee the provision of the service; Under the idea that the only thing it could do was to divest itself of its management by granting it to a private party, that is, the State continued to be responsible for the provision of the service and therefore the one called upon to compensate for the damages caused by the failures of the service, without prejudice to the possibility of repeating against the subcontracted private party.<sup>(29)</sup>

Article 365 of the Political Constitution of Colombia establishes that one of the social purposes of the State is the provision of public services. For this reason, it must guarantee its attention to all the inhabitants of the national territory. It is added in this provision that the regime of public services would be established by law and that these may be provided by public entities or by private parties under state regulation, control, and



oversight.<sup>(30)</sup>

In turn, Article 367 *ibidem* refers to residential, public utilities, specifying that it is the legislature that is responsible for regulating the competencies and responsibilities related to their provision, as well as defining their coverage, quality, and financing, from which it is inferred that the constituent emphasized the importance of public utilities and that they are considered as an instrument for the realization of the purposes of the Social State of Law since it is through this type of services that a dignified existence is achieved.<sup>(31)</sup>

From this normative context, the exceptionality of the domiciliary public utilities companies is highlighted, which, as can be seen, has its genesis in the Political Constitution of Colombia, so it is not a merely legal matter. Thus, its legal regime is exceptional since what is sought is an adequate provision of public services.<sup>(32)</sup>

It follows from the preceding that when the State assumes directly or participates with private parties in this task, the entities that arise for these purposes are also invested with this special character and are subject to the legal regulations specifically designed for the adequate provision of public services.<sup>(33)</sup> The same happens when private parties assume the provision of public services. Thus, public, private, or mixed companies whose corporate purpose is the provision of the services in question, rather than mixed economy companies, companies between public entities or private companies, become entities of a special nature in order to respond to this constitutional interest of subjecting this activity of social interest to a special legal regime.<sup>(34)</sup>

In addition to the above, numeral 7 of Article 150 of the Political Charter authorizes the legislator to create or authorize the creation of decentralized entities of the national order, including public establishments, mixed economy companies, and industrial and commercial companies of the State, but without being an exhaustive list, hence it is up to the Congress of the Republic: "to determine the structure of the national administration and create, suppress or merge ministries, administrative departments, superintendencies, public establishments and other entities of the national order, indicating their objectives and organizational structure".<sup>(35)</sup>

Thus, Law 142 of 1994 was issued, creating the general regime of residential and public utilities, indicating the subjects that could provide them and their legal regime, and establishing the following categories of companies:<sup>(36)</sup>

- Official public utility company. It is the one in whose capital the Nation, the territorial entities, or the decentralized entities of the former or these have 100% of the contributions.
- Mixed public utility company. It is the one in whose capital the Nation, the territorial entities, or the decentralized entities of the former or the latter have contributions equal to or greater than 50 %.
- Private-public utility company. It is one whose capital is majority owned by private individuals or by entities arising from international agreements that wish to submit themselves entirely to the rules to which private individuals are subject for these purposes.

In the same Law, Article 17, which refers to the legal nature of public utility companies, specifies that they are joint stock companies with the purpose of rendering domiciliary public utilities and specifies that those that are not formed with capital represented by shares must be formed as industrial and commercial companies of the State; however, the law reserves the term "domiciliary public utilities companies" for stock companies, whether public, mixed or private, that provides water, sanitation, electricity, fuel gas, basically switched telephony, and local mobile telephony services in rural areas and with a legally defined duration.<sup>(37)</sup>

In the constitutional block, reference is made to the importance of the provision of domiciliary public utilities since they are considered linked to other fundamental prerogatives such as life, health, and personal integrity, since they develop concepts such as decent housing by making it possible to meet the needs of daily life, food preservation, personal hygiene, among other aspects. It has been noted that they ensure conditions of comfort for the inhabitants.<sup>(38)</sup>

For its part, the International Covenant on Economic, Social and Cultural Rights enshrines the right to public services, specifying that people have the human right to enjoy a place of residence where they can isolate themselves and rest for the necessary time; this can be done in the context of a dwelling that has the availability of services, materials and infrastructure, allowing access to natural and common resources such as drinking water, energy, heating and lighting, sanitary and washing facilities, food storage, waste disposal, drainage and emergency services.<sup>(39)</sup>

The doctrine indicates that according to the definition of the Committee on Economic, Social, and Cultural Rights, domestic public services must be sufficient, regular, efficient, and affordable.<sup>(40)</sup>

### **The principle of publicity in official public utilities companies**

As indicated in the preceding lines, the public function entails in its development the publicity of the acts developed and at the level of the State entities, whatever their nature, it is established that the obligation to make known their acts, contracts, and decisions so that they can be disclosed and eventually controlled is established.<sup>(41)</sup>

In addition to this, in consideration of Law 1712 of 2014, by which the Transparency Law was created, it is indicated that the greatest principle of public administration is publicity, which is materialized in the right that

people have to access public information, so that all types of information must be easily accessible through the means and procedures established in the law, being obligated subjects to provide such information the public companies of the State and the companies in which the State has participation, regardless of their percentage, finding that all of them must guarantee the principle of publicity of their procedures, guidelines, purchases, awarding data, contests and bids, information that must also be reported to SECOP.<sup>(42)</sup>

Corollary to the above, when it comes to state contracting, Article 3(c) of Law 1150 of 2007 establishes the Electronic System for Public Contracting - SECOP - as an instrument in which the official information of the contracting carried out with public money is recorded and condensed in digital channels of the organization.<sup>(43)</sup>

In fact, the National Agency for Public Procurement warns that in order for publicity to materialize, the official public utilities companies are obliged to publish their actions through SECOP II. The mentioned institution specifies that the Agency considers that the obligation to publish in SECOP II all the documents related to the contractual activity of the entities with special regimes contained in Article 53 of Law 2195 of 2022 must be interpreted systematically with the precepts that exist on the matter, such as among others,<sup>(44)</sup> the following normative statements:

1. Articles 74 and 209 of the Constitution
2. Article 3, literal c) of Law 1150 of 2007
3. Articles 3, 9, literal e) and 11, literal g), of Law 1712 of 2014
4. Articles 7 to 10 of Decree 103 of 2015 - compiled in Articles 2. 1.1.1.1.1. to 2.1.1.1.6.1 Of Decree 1081 of 2015-.<sup>(45,46,47,48,49,50)</sup>

Thus, given that Article 53 of Law 2195 of 2022 complemented the provisions already established in Law 1150 of 2007, the reading of said article must be done systematically. In this sense, it should be noted that contracting with public resources is a concept expressly referred to in Law 1150 of 2007, even from the title itself, since it indicates that said Law is "Whereby measures for efficiency and transparency are introduced in Law 80 of 1993, and other general provisions on contracting with public resources are dictated".<sup>(51)</sup> Likewise, the terminology "contracting with public resources" is found in Article 1, when defining the scope of application of its provisions, and in Article 3(c) -from which the duty to publish in the SECOP arises, expressly states that this part of the article applies to "contracting with public money".<sup>(52)</sup> This interpretation is consistent with the scope of the provisions of Title II of said law, entitled "Public Contracting with Public Resources".<sup>(53)</sup>

The principle of publicity of contracts is also derived from the recent Law 2195 of 2022: The following paragraphs are added to Article 13 of Law 1150 of 2007, which will read as follows:

#### GENERAL PRINCIPLES OF THE CONTRACTUAL ACTIVITY FOR ENTITIES NOT SUBJECT TO THE GENERAL STATUTE OF CONTRACTING OF THE PUBLIC ADMINISTRATION.

State entities that by legal provision have a contractual regime that is exceptional to that of the General Public Administration Contracting Statute shall apply in the development of their contractual activity, in accordance with their special legal regime, the principles of the administrative function and fiscal management as provided in Articles 209 and 267 of the Political Constitution, respectively, as the case may be, and shall be subject to the regime of disqualifications and incompatibilities legally provided for state contracting.<sup>(44,45)</sup>

In the development of the above principles, they must publish the documents related to their contractual activity in the Electronic System for Public Procurement -SECOP II- or the transactional platform that takes its place.<sup>(56)</sup> For this Article, contractual activity is understood as the documents, contracts, acts, and information generated by bidders, contractors, contractors, supervisors, or auditors, both in the pre-contractual, contractual, and post-contractual stages.<sup>(57)</sup>

From the entry into force of this Law, a transition period of six (6) months will be established for the entities to comply effectively with the provisions herein.<sup>(58)</sup>

The interpretation that has been given to that article is that the official domiciliary public utilities companies must publish in the SECOP II all the documents related to the contractual activity; therefore contracting with the charge to public resources, a duty that is imposed not only based on that norm, but with what is enshrined in Articles 74 and 209 of the Political Constitution, Article 3, literal c) of Law 1150 of 2007, Articles 3, 9, literal e) and 11, literal g), of Law 1712 of 2014; and, Articles 7 to 10 of Decree 103 of 2015 compiled in Articles 2. 1.1.1.1.1. to 2.1.1.1.6.1. Of Decree 1081 of 2015.<sup>(59,60,61,62,63)</sup>

It was also specified that, in line with this last normative provision, the official domiciliary public utilities companies must publish documents such as authorizations, requirements, approvals, or reports of the supervisor or auditor that prove the execution of the contract, the procedures, guidelines and policies on procurement that correspond to the documents that conform them provided in the contracting manual of the entity; and, the annual procurement plan.<sup>(64)</sup>

For now, this regulatory provision is in force and has full applicability to public utilities since it has not been declared unconstitutional, so all state entities that by law have a contractual regime, even if it is exceptional, must publish in SECOP II all documents related to their contractual activities, i.e., pre-contractual, contractual

and post-contractual documents that are carried out after July 18, 2022.<sup>(65)</sup>

### **Implications of publishing all contractual activity of public utilities in SECOP II.**

*As previously stated, Article 32 of Law 142 of 1994 provided for the application of private law in public utilities companies, indicating that they are governed exclusively by this type of provisions regardless of their public or private nature.*

This means that these companies operate within the framework of free competition, which means that they are in conditions of financial sufficiency and solidarity where people with greater resources and free competition are concerned, giving way to the creation of viable and more efficient entities that would expand, especially among the neediest population.<sup>(66,67)</sup>

This change, although with some setbacks, has led to positive results since it allows the nationalization of public services, taking them out of the sphere of politicization and bureaucracy. Thus, free competition allows for a better quality of life for the people to whom the service is provided.<sup>(68)</sup>

It should be noted that over the years, the official public utilities companies have been losing business opportunities to private companies that develop the same activity because Colombian legislation wants to bring the actions of these to the rules of state contracting, leaving out the exceptionality of this type of companies and disadvantaged by the publicity of their commercial activities.<sup>(69)</sup>

In the years 1990-1994, the policies of the then president of Colombia, Mr. CESAR AUGUSTO GAVIRIA TRUJILLO, boosted foreign investment and energized the provision of Public Household Services, achieving the participation of private agents for the provision of the same. However, the state introduced major legal changes so that this could be done; citizens could count on extensive coverage, and the quality of the required public services could be guaranteed.<sup>(70)</sup>

This framed the companies providing public services in three (3) branches, the official, the mixed, and the private ones, for which the state-regulated through several norms their operation and the provision of their services, giving them powers for the quality of their commercial activity to develop in the competition market and in this way provide and improve the quality of the services provided.<sup>(71,72,73,74,75)</sup>

The freedom of enterprise is the power to carry out market strategies where the results lead to the improvement and quality of the services offered. However, these strategies must be safeguarded under the rule of law. They may allow the actions between peers to be treated equally without generating any commercial advantage of one over the other.

In this sense, the national public procurement agency is not a regulatory agent for public utilities since it was created as a mechanism for contracting under the procedure of Law 80 of 1993. Therefore, the actions of public utilities should not be subject to its regulations or circulars.

### **CONCLUSIONS**

The publication of all the acts of the official public utilities companies in the SECOP puts them at a disadvantage because they would surrender their way of negotiating in a regulated and competitive market that every day seeks to improve the quality of their services with the few resources allocated for it when their private peers can get rid of a large amount of money for the implementation of their projects.

The users would benefit from the free competition of public utility companies of an official nature since they would be able to carry out their activities in an orderly manner in order to improve the quality of their services.

In this regard, the Council of State has pronounced that literal c) of Article 3 of Law 1150 of 2007 is inspired by constitutional norms in the free competition promulgated by Article 333 of the Political Constitution of Colombia and the principle of equality, since, most of the entities that have an exceptional contractual regime to that of Law 80 of 1993, are regulated by the private sector, so that in this context, publishing the contractual activity leads to competitors who are not subject to this obligation, to have access to information on the operations of a company.

Moreover, it must be understood that there is information that, although it corresponds to the contractual activity that is not covered by the trade secret, undoubtedly would give an advantage to competitors to have access to it so that companies that enter into contracts with public resources are at a disadvantage with those who manage private resources. Hence, it was necessary to suspend External Circulars No. 1 of 2013 and 20 of 2015, which the Company's Board of Directors issued. 1 of 2013 and 20 of 2015, since they ignored literal c) of Article 3° of Law 1150 of 2007 by equating the advertising obligations of entities governed by private law with the advertising duties of entities governed by the General Contracting Statute.

### **BIBLIOGRAPHIC REFERENCES**

1. Ron M, Pérez A, Hernández-Runque E. Nivel de riesgo para la salud y predicción del dolor musculoesquelético en trabajadores en condiciones de teletrabajo: Un enfoque matricial. *Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria* 2023;3:40-40. <https://doi.org/10.56294/ri202340>.

2. Peña MG, Ocmin LSL, Romero-Carazas R. Control interno de inventario y la gestión de resultados de un emporio comercial de la región de San Martín - Perú. *Región Científica* 2023;2:202392-202392. <https://doi.org/10.58763/rc202392>.
3. Freire-Palacios V, Jaramillo-Galarza K, Quito-Calle J, Orozco-Cantos L. La inteligencia artificial en la gamificación para promover la salud mental de los estudiantes universitarios: una revisión de alcance. *Salud, Ciencia y Tecnología* 2023;3:639-639. <https://doi.org/10.56294/saludcyt2023639>.
4. Castillo-González W. The importance of human supervision in the use of ChatGPT as a support tool in scientific writing. *Metaverse Basic and Applied Research* 2023;2:29-29. <https://doi.org/10.56294/mr202329>.
5. Agencia Nacional de Contratación Pública. Concepto C-032. 2021.
6. Agencia Nacional de Contratación Pública. Concepto C-024. 2023.
7. Haro AMZ, Mora ÁSR. Malnutrition prevention strategy based on neonatal screening through the metcoff clinical method. *Salud, Ciencia y Tecnología* 2023;3:555-555. <https://doi.org/10.56294/saludcyt2023555>.
8. Vallejo RG. Metaverso, sociedad y educación. *Metaverse Basic and Applied Research* 2023;2:49-49. <https://doi.org/10.56294/mr202349>.
9. Centon JMG, Cubas WC, Huillcacuri JB, Maldonado ABS. El crecimiento empresarial y su relación en la rentabilidad de una MYPE del rubro comercial en Arequipa, Perú. *Región Científica* 2023;2:202387-202387. <https://doi.org/10.58763/rc202387>.
10. Karthikeyan J, Vasanthan R, Dzuwichu K. A sociolinguistic discourse analysis of assimilated English words: a usage-based model of language acquisition. *Salud, Ciencia y Tecnología - Serie de Conferencias* 2023;2:600-600. <https://doi.org/10.56294/sctconf2023600>.
11. Antúnez I, Galilea S. Servicios públicos urbanos y gestión local en América Latina y el Caribe: problemas, metodologías y políticas. CEPAL. 2003.
12. Borrero Almario PM. Régimen contractual en las empresas oficiales de servicios públicos [Tesis de Maestría]. Universidad Sergio Arboleda. 2014. [https://www.consorcioibm.com/web/uploads/media/TRABAJO\\_DE\\_GRADO\\_MAESTRIA\\_FINAL\\_01.pdf](https://www.consorcioibm.com/web/uploads/media/TRABAJO_DE_GRADO_MAESTRIA_FINAL_01.pdf)
13. Vanoy RJA. Transformación Educativa: Optimización en la Enseñanza de Logística en los Negocios Internacionales mediante la Aplicación de Inteligencia Artificial en Instituciones de Educación Superior. *Salud, Ciencia y Tecnología - Serie de Conferencias* 2023;2:422-422. <https://doi.org/10.56294/sctconf2023422>.
14. Sánchez RM. Transformando la educación online: el impacto de la gamificación en la formación del profesorado en un entorno universitario. *Metaverse Basic and Applied Research* 2023;2:47-47. <https://doi.org/10.56294/mr202347>.
15. Fernández LD, Parrado RP, Cisneros JDD. La gestión del componente laboral a través del acompañamiento a estudiantes en formación. *Región Científica* 2023;2:202383-202383. <https://doi.org/10.58763/rc202383>.
16. Bory E de JP, Naranjo OV, Herrero LB, Flores LGA, Fuentes MGB. Enseñanza híbrida: una innovación docente departamental partícipe de la transformación digital universitaria. *Seminars in Medical Writing and Education* 2023;2:28-28. <https://doi.org/10.56294/mw202328>.
17. Congreso de la República de Colombia. Ley 142. 1994.
18. Parra AL, Escalona E, Gollo O. Estudio piloto comparativo de medidas antropométricas en bipedestación entre Tablas antropométricas y un Antropómetro Harpenden. *Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria* 2023;3:48-48. <https://doi.org/10.56294/ri202348>.
19. López-Belmonte J, Pozo-Sánchez S, Moreno-Guerrero A-J, Marín-Marín J-A. We've reached the GOAL. Teaching Methodology for Transforming Learning in the METAVERSE. A teaching innovation project. *Metaverse*



Basic and Applied Research 2023;2:30-30. <https://doi.org/10.56294/mr202330>.

20. Moreno AMA, Paredes BAO, Guardias HPT, Palmera BV. Análisis estratégico para la empresa Imbocar, seccional Valledupar - Colombia. *Región Científica* 2023;2:202395-202395. <https://doi.org/10.58763/rc202395>.

21. Ganán K, Chasillacta F. La comunicación en el cuidado humanizado brindado por el profesional de enfermería. *Salud, Ciencia y Tecnología* 2023;3:505-505. <https://doi.org/10.56294/saludcyt2023505>.

22. Pérez BNP, Miranda GLH, Horta GAH, Vitón-Castillo AA. Tendencias del proceso de gestión del trabajo metodológico en la carrera de medicina. *Salud, Ciencia y Tecnología - Serie de Conferencias* 2023;2:487-487. <https://doi.org/10.56294/sctconf2023487>.

23. Corte Constitucional. Sentencia C-741. 2003.

24. Corte Constitucional. Sentencia C-736. 2007.

25. Corte Constitucional. Sentencia T-761. 2015.

26. Florentin GNB. The human dimension in nursing. An approach according to Watson's Theory. *Community and Interculturality in Dialogue* 2023;3:68-68. <https://doi.org/10.56294/cid202368>.

27. Llana AJO, Ruiz JAZ, Claudio BAM. Quality of service and citizen satisfaction in a Lima district municipality. *Southern Perspective / Perspectiva Austral* 2023;1:17-17. <https://doi.org/10.56294/pa202317>.

28. Eljaude Riscalda S, Roa Caballero LA. El principio de publicidad en la contratación de las empresas prestadoras de servicios públicos. *Ámbito Jurídico*. 2022. Disponible en: <https://www.ambitojuridico.com>

29. Rasheed Z, Ghwanmeh S, Abualkishik AZ. Harnessing Artificial Intelligence for Personalized Learning: A Systematic Review. *Data and Metadata* 2023;2:146-146. <https://doi.org/10.56294/dm2023146>.

30. Aveiro-Róbalo TR, Pérez-Del-Vallín V. Gamification for well-being: applications for health and fitness. *Gamification and Augmented Reality* 2023;1:16-16. <https://doi.org/10.56294/gr202316>.

31. Lobato KJT, Pita DLR, Ruiz GEZ, Claudio BAM. The impact of job performance and performance on workers in northern Lima. *Health Leadership and Quality of Life* 2023;2:30-30. <https://doi.org/10.56294/hl202330>.

32. Gonzalez-Argote D, Gonzalez-Argote J. Generation of graphs from scientific journal metadata with the OAI-PMH system. *Seminars in Medical Writing and Education* 2023;2:43-43. <https://doi.org/10.56294/mw202343>.

33. Jeronimo CJC, Basilio AYP, Claudio BAM, Ruiz JAZ. Human talent management and the work performance of employees in a textile company in Comas. *Southern Perspective / Perspectiva Austral* 2023;1:5-5. <https://doi.org/10.56294/pa20235>.

34. Matías Camargo SR. Los servicios públicos domiciliarios en Colombia: su prestación, regulación y control. *Revista del CLAD Reforma y Democracia*. 2015; (63):163-194.

35. Velasco ASD, Ccama FLM, Claudio BAM, Ruiz GEZ. Transformational Leadership as a Driver of Business Success: A Case Study in Caquetá. *Health Leadership and Quality of Life* 2023;2:37-37. <https://doi.org/10.56294/hl202337>.

36. Yauri-Paquiyaury Y, Enriquez-Gavilan N, Meneses-Claudio B, Lopez-Curasma A, Romero-Sandoval J. Aggressiveness and school coexistence in students of the 6th grade of the educational institution N° 20595 «José Gabriel Condorcanqui», San Mateo 2021. *Data and Metadata* 2023;2:169-169. <https://doi.org/10.56294/dm2023169>.

37. Auza-Santiváñez JC, Díaz JAC, Cruz OAV, Robles-Nina SM, Escalante CS, Huanca BA. Bibliometric Analysis of the Worldwide Scholarly Output on Artificial Intelligence in Scopus. *Gamification and Augmented Reality* 2023;1:11-11. <https://doi.org/10.56294/gr202311>.

38. Carestia DR, Beltran AF, Cerdera F, Sanchez ML, Ibáñez F. Impacto fisiológico de la respiración, en la salud y en el nivel del estrés. *Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria* 2023;3:46-46. <https://doi.org/10.56294/ri202346>.
39. Bory E de JP, Naranjo OV, Herrero LB, Flores LGA, Fuentes MGB. Pertinence of the teaching use of virtual classroom by Basic Biomedical Science Department. *Seminars in Medical Writing and Education* 2023;2:31-31. <https://doi.org/10.56294/mw202331>.
40. Miranda Londoño A. La libre competencia en los servicios públicos. Disponible en: <https://www.portafolio.co/opinion/otros-columnistas-1/la-libre-competencia-en-los-servicios-publicos-579431>. 2023.
41. Montano-Silva RM, Fernández-Brefte T, Abraham-Millán Y, Céspedes-Proenza I, Pantoja-García E. «Tooth fairy» educational strategy for infants in the fifth year of life. *Community and Interculturality in Dialogue* 2023;3:77-77. <https://doi.org/10.56294/cid202377>.
42. Barrios CJC, Hereñú MP, Francisco SM. Augmented reality for surgical skills training, update on the topic. *Gamification and Augmented Reality* 2023;1:8-8. <https://doi.org/10.56294/gr20238>.
43. Lepez CO. Invisible challenges in healthcare leadership. *Health Leadership and Quality of Life* 2023;2:35-35. <https://doi.org/10.56294/hl202335>.
44. Ñañez-Silva M, Meneses-Claudio B. University academic tutoring in times of COVID-19. Proposal of strategies from the perspective of the tutor and tutored. *Data and Metadata* 2023;2:165-165. <https://doi.org/10.56294/dm2023165>.
45. Pérez Cardona LA, Suárez Zapata N. Obligación de las empresas industriales y comerciales del estado de publicar su contratación en el SECOP [Tesis de grado]. Institución Universitaria de Envigado. 2015. <http://bibliotecadigital.iue.edu.co/jspui/handle/20.500.12717/1502>
46. Morgner MI, Djament L. Impact of Preventive and Mandatory Social Isolation in the control of type I diabetes in adults in the Buenos Aires Metropolitan Area. *Community and Interculturality in Dialogue* 2023;3:82-82. <https://doi.org/10.56294/cid202382>.
47. Castillo-Gonzalez W, Lepez CO, Bonardi MC. Augmented reality and environmental education: strategy for greater awareness. *Gamification and Augmented Reality* 2023;1:10-10. <https://doi.org/10.56294/gr202310>.
48. Leon E, Rodriguez C, Martínez MDC, Ron M. Hearing injuries due to atmospheric pressure changes in air and water survival training instructors. *Health Leadership and Quality of Life* 2023;2:39-39. <https://doi.org/10.56294/hl202339>.
49. Gavilan NE, Paquiyauri YY, Meneses-Claudio B, Lopez-Curasma A, Romero-Sandoval J. Pedagogical Management and Managerial Leadership in the Secondary Educational Institutions of Network 6, UGEL 06, Ate, 2020. *Data and Metadata* 2023;2:172-172. <https://doi.org/10.56294/dm2023172>.
50. Ramírez Gómez J. Régimen legal de la competencia en los servicios públicos domiciliarios. *Revista de Derecho, Universidad del Norte*. 2003; 20:92-134.
51. Horta GAH, García ZG. Resultados del tratamiento de rehabilitación física en niños con retardo en el desarrollo psicomotor. *Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria* 2023;3:28-28. <https://doi.org/10.56294/ri202328>.
52. Lichtensztejn M, Benavides M, Galdona C, Canova-Barrios CJ. Knowledge of students of the Faculty of Health Sciences about Music Therapy. *Seminars in Medical Writing and Education* 2023;2:35-35. <https://doi.org/10.56294/mw202335>.
53. Dionicio RJA, Serna YPO, Claudio BAM, Ruiz JAZ. Sales processes of the consultants of a company in the bakery industry. *Southern Perspective / Perspectiva Austral* 2023;1:2-2. <https://doi.org/10.56294/pa20232>.
54. Suárez EJC. Cursos de calidad para una educación superior virtual de calidad. *Salud, Ciencia y Tecnología*

- Serie de Conferencias 2023;2:575-575. <https://doi.org/10.56294/sctconf2023575>.

55. Rojas López JG. El régimen de contratación de las empresas de servicios públicos, domiciliarios de carácter oficial. *Revista Ratio Iuris*. 2005.

56. Rodríguez-Martínez C, Alvarez-Solano J, Pérez-Galavís AD, Ron M. Distance education during the COVID-19 pandemic: experience at a public university. *Seminars in Medical Writing and Education* 2023;2:32-32. <https://doi.org/10.56294/mw202332>.

57. Salvador VKA, Barrera MJ, Olvera JLC, Chavez MTC, Riva MEM-L. Formación del docente de enfermería en el uso de Innovación educativa en la Atención Primaria Salud: Revisión literaria. *Salud, Ciencia y Tecnología* 2023;3:471-471. <https://doi.org/10.56294/saludcyt2023471>.

58. Asencios-Trujillo L, Asencios-Trujillo L, Rosa-Longobardi CL, Gallegos-Espinoza D, Piñas-Rivera L. Inteligencia emocional en estudiantes del último año de un programa de educación de una universidad privada en Lima. *Salud, Ciencia y Tecnología - Serie de Conferencias* 2023;2:406-406. <https://doi.org/10.56294/sctconf2023406>.

59. David BGM, Ruiz ZRZ, Claudio BAM. Transportation management and distribution of goods in a transportation company in the department of Ancash. *Southern Perspective / Perspectiva Austral* 2023;1:4-4. <https://doi.org/10.56294/pa20234>.

60. Uribe Tobón EM. *Cartilla de Servicios Públicos*. 2010.

61. Torres MER, Espriella PGDL. Creación de un modelo tecno-pedagógico para el fortalecimiento de la lengua Emberá Katío mediante las costumbres ancestrales en la institución educativa el Rosario de Tierralta. *Región Científica* 2023;2:202398-202398. <https://doi.org/10.58763/rc202398>.

62. Torres A, Pérez-Galavís A, Ron M, Mendoza N. Factores Psicosociales Laborales y Estrés en el Personal Médico Asistencial. *Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria* 2023;3:42-42. <https://doi.org/10.56294/ri202342>.

63. Cano CAG, Castillo VS, Rojas EEM. Strategy for improving learning in the Financial Tools and Project Management Course through the use of Second Life-SL. *Metaverse Basic and Applied Research* 2023;2:31-31. <https://doi.org/10.56294/mr202331>.

64. Estrella NLC, Pérez GPL. Atención de enfermería en pacientes oncológicos con cuidados paliativos. *Salud, Ciencia y Tecnología* 2023;3:488-488.

65. Valencia GD. Metamorfosis del Estado: de empresario a regulador: El caso de los servicios públicos domiciliarios en Colombia. *Ecos de Economía*. 2004; (18):7-32.

66. Pérez-Hernández G, Téllez NR, C JJR, S LGL, L OG. Use of videos as a method of learning in social service projects. *Community and Interculturality in Dialogue* 2023;3:100-100. <https://doi.org/10.56294/cid2023100>.

67. Romero-Carazas R. Prompt lawyer: a challenge in the face of the integration of artificial intelligence and law. *Gamification and Augmented Reality* 2023;1:7-7. <https://doi.org/10.56294/gr20237>.

68. Cantaro JCC, Tello JDLCH, Ruiz GEZ, Claudio BAM. Leadership styles and organizational climate among employees in Lima, Peru. *Health Leadership and Quality of Life* 2023;2:36-36. <https://doi.org/10.56294/hl202336>.

69. Ezzaim A, Dahbi A, Haidine A, Aqqal A. Enhancing Academic Outcomes through an Adaptive Learning Framework Utilizing a Novel Machine Learning-Based Performance Prediction Method. *Data and Metadata* 2023;2:164-164. <https://doi.org/10.56294/dm2023164>.

70. Cánovas LPL, Cánovas LBL, Rodríguez YP, Hernández BG, Martín MMP, Montano AL. Evaluation of Burnout Syndrome and associated factors in primary care health personnel. *Community and Interculturality in Dialogue* 2023;3:73-73. <https://doi.org/10.56294/cid202373>.

71. Viera EJH, Meléndez NMN, Claudio MCM, Ruiz JAZ. Selection process in the Operations area of a company in the ecological sector. Southern Perspective / Perspectiva Austral 2023;1:13-13. <https://doi.org/10.56294/pa202313>.

72. Cuentas JAA, Bernedo-Moreira DH. Ephemeral Architecture as a Solution in the Evolution of Public Spaces. Land and Architecture 2023;2:51-51. <https://doi.org/10.56294/la202351>.

73. Valencia DS. Training plan for the conservation and implementation of coccinellids (Coleoptera: Coccinellidae) as natural biological control agents. Environmental Research and Ecotoxicity 2023;2:52-52. <https://doi.org/10.56294/ere202352>.

74. Martínez CMO, Rivera RIB, Perez RLR, Guzmán JRV, Carazas RR, Suárez NR, et al. Rescue of the historical-cultural heritage of the Yanesha: interculturality and inclusive education of the oral traditions. Multidisciplinar (Montevideo) 2023;1:5-5. <https://doi.org/10.62486/agmu20235>.

75. Manrique LAC, Manrique JAC. Analysis of the distribution and size of aquaculture in Peru: evaluation of species, areas and types of law. Edu - Tech Enterprise 2023;1:2-2. <https://doi.org/10.71459/edutech20232>.

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