

**Constitutional Court
Secretary General¹**

Bogota, Capital District, August eighteen (18), two thousand eleven (2011)

Official Communication N° A-1183/2011 (Please include in your reply the number of this Official Communication and the file number).

Mrs.

NOHRA PADILLA HERRERA

Legal Representative

ASOCIACIÓN COOPERATIVA DE RECICLADORES DE BOGOTÁ

Carrera 3a. No. 14.46/48

This city

RE: PROCEEDINGS No. 183, 2011. SUSPENSION OF PUBLIC BIDDING No. 001 OF 2011 CONDUCTED BY UNIDAD ADMINISTRATIVA ESPECIAL DE SERVICIOS PÚBLICOS (UAESP) [Special Public Services Administrative Unit]. SENTENCE T-724 of 2003. FILE T-723237

Dear Mrs. Padilla, our respects:

For the purpose of processing the action dated August eighteen (18) two thousand eleven (2011) forwarded by the Third Review Chamber of the Constitutional Court, presided by Judge **JUAN CARLOS HENAO PÉREZ**, the relevant portion of which is transcribed below, please be advised of its contents:

[...]

*“**THREE:** It is hereby ordered by the Secretary of the undersigned Authority that a copy of these Proceedings be **SERVED** and **SENT** to the UAESP and petitioner; as well as the other notices mentioned under No. 36 in Decree 2591 of 1991”.*

Yours truly,

/s/

MARTHA VICTORIA SÁCHICA DE MONCALEANO
Secretary General

I enclose a copy of the aforementioned proceedings
MVSM/OMR/YMS

12 No. 265 Palacio de Justicia 2° Piso, Bogotá, D.C.

¹ This English translation of the original Republic of Colombia Constitutional Court document was created by WIEGO in September, 2011.

REPUBLIC OF COLOMBIA

[PRINTED NATIONAL SEAL]

CONSTITUTIONAL COURT

Third Review Chamber

Proceedings 183 of 2011

Reference: Suspension of Public Bidding No. 001 of 2011 conducted by the Unidad Administrativa Especial de Servicios Públicos (UAESP).

Reporting Judge

Attorney JUAN CARLOS HENAO PÉREZ

*Assisted by: Javier Francisco Arenas Ferro and
María Dolores Collazos Velasco*

Bogota, Capital District, August eighteen (18), two thousand eleven (2011)

The Third Review Chamber of the Constitutional Court, constituted by Judges **GABRIEL EDUARDO MENDOZA MARTELO, JORGE IVÁN PALACIO PALACIO and JUAN CARLOS HENAO PÉREZ** –who presides it– exercising its constitutional and legal competencies, hereby passes the following **RESOLUTION**.

WHEREAS

1. The Third Review Chamber of the Constitutional Court, under Proceedings 180 dated August eleven (11) 2011, admitted the action filed by Nohra Padilla Herrera vs. Unidad Administrativa Especial de Servicios Públicos (UAESP).

2. The aforementioned plaintiff alleged an assumed infringement of orders issued under Sentence T-724 of 2003 and Proceedings 268 of 2010 relative to Public Bidding No. 001 of 2011, called for the purpose of “(...) *franchising, under the concept of Exclusive Service Areas, the provision of Public Cleansing Service in the City of Bogota, Capital District, Colombia, regarding the components of collection, sweeping, cleaning roads and public areas, grass mowing, tree pruning in public areas and removal of waste to the final disposal site, including all*

financial, business, technical, operational, educational, and management activities this involves.”

3. Article 23 under Decree 2591 of 1991 provides under Section one (1) that the purpose of orders passed in rights-safeguarding sentences is “(...) *to ensure that plaintiff fully enjoys his/her rights (...)*”, and Section two (2) provides that in the event that the authority whose duty is to execute the judgment persists in its failure to do so, the constitutional judge “(...) *may issue the necessary provisions so the right may be freely exercised (...)*.”

4. Additionally, Section four (4) in the aforementioned Decree provides that “*In any event, the judge shall determine any other effects of the Proceedings for the particular case and shall retain its jurisdiction until the time when the rule of law is fully re-established or the causes of the threat are completely eliminated.*”

5. Section one (1), Article 7 in Decree 2591 of 1991 provides that “*As of the time the petition is filed, when the judge finds it expressly necessary and urgent to safeguard the right, it shall suspend the application of the particular action that jeopardizes or infringes it*”.

6. Notwithstanding measures found in the copy of the Requirements Sheet for Public Bidding No. 001 of 2011, filed by the UAESP before the undersigned Authority on August eleven (11) two thousand eleven (2011) –such as the criteria to qualify, award of industry and equipment provision actions– well-grounded doubts prevail about compliance of the orders passed under Sentence T-724 of 2003 and Proceedings 268 of 2010.

7. Therefore, in Proceedings 180 dated August eleven (11) two thousand eleven (2011), the UAESP was expressly asked “*Which criteria were considered to select the twelve (12) Second-Level Organizations?* And the entity only answered that “(...) *the twelve (12) organizations selected to participate in the process (...) accredited the condition (...)*,” without specifying the conditions to which it referred (Item 6, written on August 16, 2011, filed by the UAESP). Consequently, the question about which population was actually benefited by the actions taken and whether it is completely constituted by recyclers from the district is yet to be answered.

8. In this sense, under Item four (4) of Proceedings 180 dated August eleven (11) two thousand eleven (2011) the UAESP was also asked about the nature and functioning of the Recycling Routes, but this Entity did not answer the question and therefore there are persistent doubts regarding the effectiveness of actions taken to correct the marginality condition of the population of recyclers in Bogota,

Capital District, which is considered a disfranchised group subject to affirmative actions.

9. In this sense, the Office of the Attorney General, under writ filed before the undersigned Authority on August sixteen (16) two thousand eleven (2011), noted that notwithstanding the actions taken by the UAESP at the referred bidding, as well as the criteria to qualify the bidders –and “(...) *under the law (...) the fact that the UAESP failed to meet its obligations may not be considered prima facie. [The] Attorney General shares with the Court the concern stated under item 21 in Proceedings 180 of 2011, where it also recognizes ‘the lack of proof to ascertain that the orders passed in the referred rulings.’ [Given that] notwithstanding valuable elements such as those related herein, there may be others as or more valuable which are difficult to learn or consider in the very brief peremptory period of 48 hours (...)*” (Document by the Office of the Attorney General, pages 6 and 7).

10. UAESP advised the Constitutional Court on August seventeen (17) of the current year that the adjudication hearing for the public bidding No. 001 of 2011 was scheduled for the twenty third (23) of the same month under Resolution No. 520 of 2011.

11. Consequently –as noted by the Attorney General– the problems caused by the short term provided for reviewing proof persist, and it becomes necessary to examine it more closely.

12. In this matter, the urgent need to have the intervention of the judge safeguarding constitutional ordinances is evident, considering that besides dealing with compliance of orders from the undersigned Authority in the referred provisions, the doubt persists of the possible infringement of the State’s duty to take actions in favour of the discriminated or marginal groups, so that equality may be real and effective, just as provided under Article 13 of the Constitution.

13. The Constitutional Court is fully aware, as noted in item 23 of Proceedings 180 of 2011, that “(...) *this relates with a unique environmental as well as social opportunity for the involved entities to take the necessary actions to benefit the recycling population of this city*” and such actions will also have significant repercussions for the benefit of all the inhabitants of the capital city.

14. Considering all the above and pursuant to the referred articles under Decree 2591 of 1991, it becomes necessary –as a precautionary measure– to suspend Public Bidding No. 001 of 2011 to prevent a possible infringement of the fundamental rights of this population as well as the environmental interests of the

citizens of Bogota –including the right to a healthy environment and public health– as well as overlooking the orders passed by the undersigned Authority.

15. This type of measures have been adopted by the undersigned Authority in cases similar to this one, where both the Third and the Second Review Chambers ordered –under Proceedings No. 091 of 2009 and Proceedings 150 of 2009– to suspend bidding No. 001 of 2010 intended to “(...) *engage under the modality of a franchise the overall Administration, Operation, and Maintenance of the Doña Juana sanitation landfill in the City of Bogota, Capital District - Colombia, relative to final disposal of solid Waste components and treatment of lixiviates, with alternatives of utilizing the waste that dumped into the RSDJ*² [Doña Juana sanitation landfill] *stemming from ordinary cleansing service*” and public Bidding No. 002 of 2009 intended to engage “(...) *the operation and exploitation of solid waste collection, sweeping and cleaning of public roads and public areas, business management, and other activities in Zone No. 1 of the city of Cali.*”

The Third Review Chamber in the Constitutional Court hereby

RESOLVES

ONE.- TO ORDER the UAESP to suspend forthwith, upon receiving this communication, Public Bidding No. 001 of 2011, intended to “(---) *franchise under the modality of Exclusive Service Areas the provision of Household Cleansing Public Service in the City of Bogota, Capital District Colombia, relative to collection, sweeping, cleaning roads and public areas, grass mowing, tree pruning in public areas and removal of waste to the final disposal site, and all the actions involved by the above, including all financial, business, technical, operational, educational, and management activities this involves*”.

TWO.- TO ORDER the UAESP to inform any court dealing with fundamental rights protection or contempt incidents related to bidding 001 of 2011 that the undersigned Authority has jurisdiction to execute sentence T-724 of 2003, so that these matters may be forwarded to the Constitutional Court.

THREE.- The Secretary General of the undersigned Authority is hereby **ORDERED TO SERVE AND SEND** a copy hereof to the UAESP and the petitioner, as well as any other notices related to item 36 in Decree 2591 of 1991.

Serve, advise, and execute.

/s/

JUAN CARLOS HENAO PÉREZ

² RSDJ stands for Residuos Sólidos Doña Juana [Note of the translator].

Reporting Judge

/s/

GABRIEL EDUARDO MENDOZA MARTELO

Judge

/s/

JORGE IVÁN PALACIO PALACIO

Judge

/s/

MARTHA VICTORIA SÁCHICA DE MONCALEANO

Secretary General

[Proceeding 183/11]