Analysis of the fragility in public procurement contracts in civil engineering works

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1 INTRODUCTION

Corruption scandals involving construction companies and public agencies were disseminated to popular knowledge in the aftermath of Operation Lava Jato1, Criminal Action 4702 (MENSALÃO), and the cartel of companies headed by OdebrechtS.A (SOUZA, 2016). In the face of these investigations, it was evident that the inappropriate use of competitive bidding processes for the construction and reform of organs and public works hides behind a broad corruption act.

Dalton Santos Avacini, president of Camargo Corrêa, told the Federal Public Prosecutor's Office the existence of a closed group integrated by the six largest contractors in the country: Odebrecht Construction, Construtora Camargo Corrêa, UTC Engenharia S.A., Construtora OAS, Construtora Andrade Gutierrez, and Construtora Queiroz Galvão, known internally as "G6" (SOUZA, 2016). This group headed by the company with the highest market power, Odebrecht, had as its main objective to maintain the prices of Petrobras contracts so that the value would be at a comfortable level for the group's companies to close deals. On the other hand, other non-group companies that indicated an interest in participating in the competition for contracts did not receive notices in advance of the occurrence of tenders (BRASIL, 2015).

In the Code of Ethics of the civil engineering professional, it is up to the construction professional to ensure the procedures are in line with the decor of his function; deliberately practicing all the requirements that his profession needs for the health and safety of all in general. In too many moments of the evolutionary process of an enterprise, it is remarkable the need for greater care with ethical titles that can be injured, because even with the integral practice of the teachings acquired in their formation, errors can exist and pass imperceptibly. In other cases, some ethical points can be suppressed due to joints for the benefit of others, other than the enterprise, because such specificities have characteristics of being more susceptible to manipulation and suppression (CONFÉA, 2018).
Due to the various aspects of manipulations and corruption that may exist in public bids, the present work aims to analyze the processes in which corruption or forms of deformation of an ethical competition occurred, seeking to understand which steps can be more easily manipulated and which should be reevaluated for a more transparent ethical process and beneficial to the State.

2 METHODOLOGY

This work has as research methodology the bibliographic study of articles, master's dissertations, and referenced texts, in addition to the analysis of bidding processes conveyed as "fraudulent" in national media and published on the Internet, seeking to evaluate cases in which manipulation is pointed out in the bidding processes.

Procedures in the area of civil construction, public knowledge, in which investigations carried out by competent bodies proved the existence of irregularities during the process, case studies were constituted in the performance of this work.

The main database, accepted in this article, was the official website of the Federal Court of Auditors for the acquisition of images and technical reports on the results found in investigations involving investigations; the official online page of the Administrative Council for Economic Defense was used for reports on investigations into corporate institutional corruption schemes and the executed agreements of denunciation of those involved in cases studied. Data from interviews collected on the websites of news companies such as Rede Globo, Jornais Gazeta and El pais were used to prove the data used in this article to qualitatively and quantitatively classify pesquisa. The code of ethics found on the official website of the Federal Council of Civil Engineering - CONFEA was used as a guide parameter throughout the project, using its guidelines as legal arguments in the judgment of the collected data.

From the analysis and study of the data collected in the databases of the Administrative Council for Economic Control, it was verified the harmful existence of corporate schemes of manipulation of a public competition, whose competing companies, in line with public servants, executed strategies to succeed in an unfair manner, with the consequent internal division of bids between the companies involved in the arrangement.

The external audit report carried out by the Court of Auditors of the Union made it possible to analyze the points that are most susceptible to fraudulent manipulation to corroborate the competition by illegal companies. The analysis demonstrated the national companies that have the greatest inability to resist corruption, demonstrating internal fragility in the control of corporate actions and decisions.

Thus, it was possible to compare the weaknesses in Brazilian public bidding processes with models of works that proved effective in the United States of America, this model is based on the transfer of responsibilities to safe companies, so that they can perform the control and monitoring of all the processes of the work and inhibit the state of injury in the existence of disability and irresponsibility of the contracted companies.
3 CONCLUSION

In an external audit study organized and carried out by the Federal Court of Auditors (TCU), 18 irregularities were pointed out only in the Integrated General Services Administration System (SIASG) and on the website of the person responsible for contract management shares in the bids, Comprasnet. Both services are the responsibility of the ministry of planning, subordinate to the federal government. Among the irregularities, the constant lack of control of the system regarding the companies that postulate favorable signs for the competition of contracts (FÉLIX, 2011); often companies convicted of administrative misconduct and declared suitable usually compete for the bidding process. Another endemic problem for the system demonstrated in the study are the few variations of competitors, such as in cases where competing companies have the same administrative partners, thus limiting the fertas of competition (FÉLIX, 2011).

However, among the points most emphasized as harmful to the bidding system, the hiring of companies whose partners are employees of the contracting companies and the lack of initiative of public agencies in punishing companies that no longer honor their proposals, for various factors such as not presenting the necessary documentation for completion of the process or withdrawal. In cases such as these the state bears all the damage and the slanderous company has ensured its power to return to competition in new bidding processes (FÉLIX, 2011).

In line with the audit study carried out, the Court of Auditors of the Union produced Graph 1:

Figure 1: Relationship between economic power and fragility of companies regarding fraud and corruption

Graph 1 shows the economic power relationship and the fragility index of fraud and corruption control. Note that about 70% of the organs that have federal power are in an intermediary zone until very high possibility of fragility in the control of corruption. This fact demonstrates the inability of the federal power when it is affronted with its own instituições, where the lack of internal control desguarnece its institutional defense mechanisms.

It is of paramount importance to emphasize the participation and omission of the state before the bidding services. According to the Jurist Roberto Baungartner, it would be possible to reduce by ten percent the value of contracts if the state respected the law of default, which establishes the period of ninety days for maximum delay of their payments. (BATISTA; SORIMA NETO; FARIELLO, 2015)

According to the jurist Marçal Justen Filho the authority has the power to decide whether or not the payment will occur, without greater control or supervision, there will be an incentive to corruption. There have been reforms in bidding laws, but the discipline of administrative contracts has basically been the same for over 60 years. According to jurist Modesto Carvalhosa, the main way to combat corruption in the Brazilian state may be the creation of insurance in contracts. In the US and European countries, there is no talk of li quote scandals. Insurance prevents the interlocution between the public authorities, contractors and suppliers. And it ensures that the work will be delivered on time, with contracted quality and at no additional cost. (BATISTA; SORIMA NETO; FARIELLO, 2015).

Therefore, it is clear that, after the audit assessment instituted by the Federal Court of Auditors (TCU), that the state and its organs are unprotected from corrupt ingets, as soon as it becomes an easy process for companies with undue intentions to take advantage of these institutional failures.

Measures should be taken from within the state institutions that avoid the facilitation of fraud of the bidding process, such as: updating of the Integrated System of Administration of Gera is Services (SIASG), so that companies that have a history of non-compliance with the measures instituted in other events that have come to harm the state, be excluded from upcoming certain stuns; institution of criteria that prevent companies that cannot present guarantees of the possibility of termination of the service to be contracted request the bidding; prevent companies that have joint partners from tabing separate tenders for competition;

Furthermore, taking into account the damage that the dropout companies present to the state, it would be considerable for this, the ratification of Law No. 8,666 that deals with agreements of insurance companies, so that it allows the state to ensure the one hundred percent of the work contract.
REFERENCES


