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3 Risks to integrity in public procurement | Working Documents

Identification of the risks to integrity in procurement

12 areas of risk of irregularities, fraud or corruption that must be assessed

Risk identification is the process of study to find, describe, categorise and, if necessary, prioritise the series of risks that must be managed in a public institution. The Anti-Fraud Office (AFO) has undertaken this process in respect of procurement by organisations in the public sector of Catalonia and presents the results in this document.

The risks identified in the public procurement process have been classified into 12 areas which are common to all contracting authorities, and organised following the sequence of the phases of preparation, bidding and performance of the procurement. These areas are arranged around one or more vulnerabilities that make the risks to integrity included in each one possible. Also included are examples of irregular, fraudulent or corrupt practices that are materialised by those risks; practices detected through investigations by the Anti-Fraud Office, risk analysis workshops with public managers organised by the AFO Prevention Directorate, meetings held with experts in contracting public works, ICT services and in the healthcare sector, reports from other institutions and supervisory authorities, or through the academic bibliography.

With this third publication in the Working Documents series, the Anti-Fraud Office seeks not only to contribute to a better understanding of these risks, but also to help public institutions identify, assess and, if necessary, prioritise the risks inherent in their procurement, a first step towards their comprehensive management.

Contents

The Anti-Fraud Office of Catalonia (AFO) is an independent institution attached to the Parliament of Catalonia, responsible for preventing and investigating corruption and preserving the transparency and integrity of Administrations and staff at the service of the public sector in Catalonia.

Its preventive arm provides support to public institutions in consolidating their integrity systems in various ways that include studying, promoting and sharing good practices that con-tribute to enhancing quality in public service provision.

These *Working Documents* form part of the preventive function of the AFO and are intended to facilitate participation in a process of joint reflection and teamwork, while at the same time promoting integrity in public procurement.

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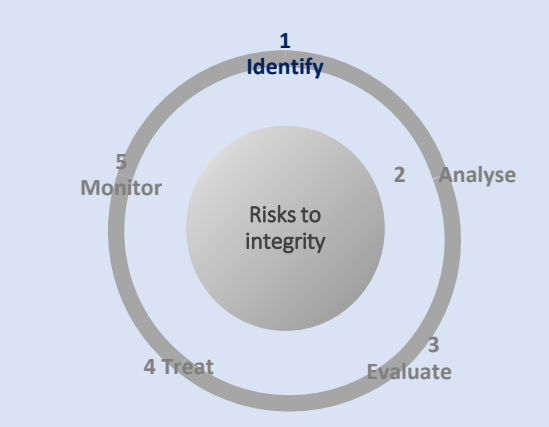
The Anti-Fraud Office of Catalonia extends its special gratitude for the contributions from public servants who took part in the public procurement risk analysis workshops, many of which were organised in collaboration with the General Directorate of Public Procurement of the Government of Catalonia and the Provincial Council of Barcelona. Our sincere thanks also go out for the contributions received from experts in public works, ICT and the healthcare sector, who met with technical staff from the Prevention Directorate and enabled both the detection of certain irregular or fraudulent practices and a better understanding of the factors that make the identified risks possible.

Risk identification is the first step in the comprehensive risk management cycle (Diagram 1), presented in the previous Working Document. This consists in a **study process to find, describe, categorise and, if necessary, prioritise the series of risks that must be managed** in an institution. The result is a list or inventory of potential risks.

Diagram 1. Identification in the comprehensive management cycle of risks to integrity



In 2017, the Anti-Fraud Office (AFO) initiated this process of gathering information[1] and study through analysis of the academic and institutional bibliography, complaints to and investigations by the AFO, meetings with experts and risk analysis workshops with public managers to:

- **detect irregular, fraudulent and corrupt practices** in Catalan public-sector procurement and
- **describe and categorise** the risks to integrity in procurement, to form a basis from which to undertake good risk management in public institutions.

This third publication in the series of Working Documents presents the result of that risk identification process. Risks to integrity in public procurement have been classified into 12 categories, called areas of risk, considered common in contracting authorities, and which are organised following the order of contractual procedure (preparation, bidding and performance phases).

These areas of risk are presented throughout this document following the same explanatory structure: first, an explanation is made of the vulnerabilities inherent in the procurement process which make the risks grouped in that area[2] possible; then, the risks identified are listed; and the final section catalogues examples of irregular, fraudulent or corrupt practices that are triggered by them. Amongst these practices are some that are frequent in all public entities; others that are found only in some types of institutions but not in others and, finally, a few that are somewhat rare, but if they occur are extremely serious, reason for which they are included in the lists.

It should be mentioned however that this publication has been prepared and drafted with two regulatory regimes in mind – that of the revised text of the law of contracts,

[1] See the explanation in *Working Documents* Nº 1, p. 9.

[2] By *inherent vulnerabilities* we understand characteristics inherent in that juncture in the procurement process or opportunities intrinsic in or inseparable from it. The next phase of the risk management cycle, when factors are analysed, seeks to find precisely those elements that could place limitations on those vulnerabilities (reducing their likelihood), exacerbate them (increasing the likelihood of risk) or create new opportunities. *Working Documents* Nº 4 explains the risk analysis phase in greater detail and analyses the different types of risk factors.

approved by Royal Legislative Decree 3/2011, of 14 November, and the current Law 9/2017, of 8 November, on public sector contracts (hereinafter, the LCSP) – and that this has a significant impact on the irregular practices listed for the purpose of illustration; for example, those related to preliminary market consultations.

However, the aim of this document is not to draw up endless lists of irregular, fraudulent or corrupt practices for each area (an extremely complex and costly task and one which would require constant updating), but rather to:

- show the diversity of ways risks can materialise, and
- provide institutions with a well-ordered compendium from which to identify their **inherent risks** in procurement.

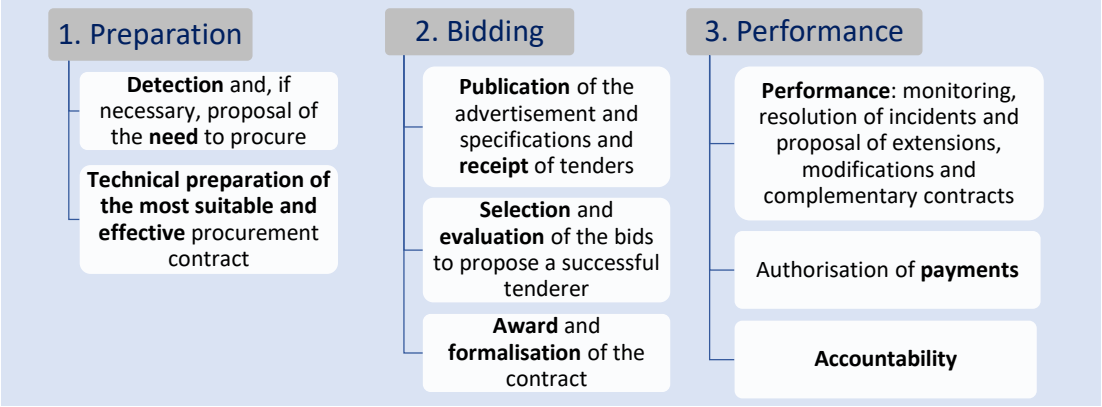
1. Areas of risk common to all contracting authorities

The study of risks to integrity in procurement was conducted from a broad perspective, exceeding that of the tender dossier. It extends from the moment a policy-maker or administrative unit detects a need and a study is made as to whether a provision should be acquired in the markets to cover it, until all contractual responsibilities have been fulfilled.

Within this procurement process, the three major procedural phases define the sequence in which areas of risk are exposed:

1. **Preparation phase**, in which the need to procure services in the markets or invest in public works is studied and, if necessary, proposed, and the most technically suitable and effective procurement contract for that need is prepared.
2. **Bidding phase**, which begins with publication of the advertisement and specifications, and ends with formalisation of the contract with the successful tenderer. Between these two events there are other moments and actions intrinsically vulnerable from the integrity point of view, such as the time limits for presentation of tenders, the activities that will lead to the selection of tenderers or evaluation of the bids presented in order to propose a successful tenderer to the contracting authority.
3. **Performance phase**, which includes performance of the contract until the extinction of all contractual liabilities. During performance, the monitoring and resolution of incidents that arise (including

Diagram 2. Intrinsically vulnerable activities in public procurement



the need to extend, modify or execute a complementary contract), authorisation of payments and demand for accountability for contractual defaults also constitute vulnerable moments and actions.

These intrinsically vulnerable moments and actions are summarised graphically in Diagram 2, focused from the point of view of the activities public institutions have to carry out in their procurement procedures.

In each phase, four areas of risks to integrity common to all contracting authorities have been set out. During **preparation** the four areas of risk are:

I. Propose and prepare unnecessary or prejudicial contracts
II. Draw up contracts that unduly curtail participation or fair competition
III. Leak privileged information
IV. Award directly to an economic operator outside the procurement procedure

In the **bidding** phase, the four areas of risk are:

V. Fail to avoid anti-competitive practices
VI. Accept or exclude tenderers in a biased manner
VII. Evaluate tenders in a biased manner
VIII. Award the tender or formalise the contracts in an irregular manner

Finally, in the **performance** phase, the four areas of risk common to all contracting authorities are:

IX. Receive a service other than that contracted
X. Unjustifiably modify the contract
XI. Authorise unjustified or irregular payments
XII. Fail to demand accountability for contractual defaults

These 12 areas of risk are summarised in Diagram 3, and explained and exemplified in the following three sections, one for each phase of the procurement process.

2. Risks in the preparation phase

International organisations, academics and experts in corruption risks in public procurement coincide in considering that this **is probably the phase with highest risk in the entire procurement process**. The reasons are many and varied – and will be examined in detail when risk factors are analysed in future

Diagram 3. Major areas of risk in public procurement by phases

1. Preparation	2. Bidding	3. Performance
I. Propose and prepare unnecessary or prejudicial contracts	**V.** Fail to avoid anti-competitive practices	**IX.** Receive a service other than that contracted
II. Draw up contracts that unduly curtail participation or fair competition	**VI.** Accept or exclude bidding companies in a biased manner	**X.** Unjustifiably modify the contract
III. Leak privileged information	**VII.** Evaluate tenders in a biased manner	**XI.** Authorise unjustified or irregular payments
IV. Award directly to an economic operator outside the procurement procedure	**VIII.** Award the tender or formalise the contracts in an irregular manner	**XII.** Fail to demand accountability for contractual defaults

Working Documents – but at this point we would highlight two of the most general causes:

1. **The importance of the decisions taken in this phase**, essentially, whether the provision should be covered by resorting to the markets, and the ideal and most efficient way to do so if procurement is necessary.
2. **The multiplier effect of these risks on the rest of the procurement process or cycle**. Anti-Fraud Office investigations demonstrate that the more risks that materialise in this phase, the higher the likelihood of further risks surfacing in subsequent stages. This statement will be exemplified as correlated risks are presented in the following phases.

I. Propose and draw up unnecessary or prejudicial contracts

Vulnerabilities

The starting point of public procurement is prior to initiation of the tender dossier. It begins with a public institution detecting and defining a need and with discussion on the most effective way of meeting that need, which may or may not be the procurement of a service provision in the markets.

Thus this first area of risks revolves around two inherent vulnerabilities in this initial stage:

1. **Opportunities of external influences or internal pressures to favour private interests in the process of detection and definition of the need**. Detection of the need can originate both from the administrative units which are directly responsible for the public services or functions in which the possible need arises, and from the elected members or politically designated officials who are ultimately responsible for those services or functions, as well as often from the recipients of complaints and grievances from citizens and users. As may be seen in the risk factor analysis, the characteristics of this process of need detection and definition create these opportunities.
2. A **broad margin of discretion** for the following **technical judgements**:
   - whether a service should be contracted to cover that need; and, if so,
   - the type of service to be contracted and the most appropriate and effective way of doing so: type of contract, timescale, type of procedure to award it, performance conditions, and so on.

The combination of these two vulnerabilities create, in the words of the OECD, "[...] many opportunities for manipulation. Furthermore, corrupt acts that will occur later can be planned in this stage"[3].

Risks to integrity

Thus, this area includes the risks of:

1. **Not detecting conflicts of interest** of the public officials who participate in detection of the need, and in the decisions on whether to contract and the best way of doing so.
2. **Not detecting offers of bribes, demands for commissions or other illegal benefits** in exchange for influencing the definition of need or preparation of the procurement contract.

[3] OECD, 2007: p. 20.

3. **Designing the procurement of works, supplies or services** which are:
   - unnecessary;
   - out of proportion;
   - impossible to perform; or
   - prejudicial to the public institution or the general interest.

Examples of detected practices

Some of the practices that enable these risks to materialise are[4]:

1. Propose a contract — or influence in the decision to promote the contract — while in a situation of **conflict of interest** (in other words, having a private interest in the decision that this service should be procured) that has not been declared to the organisation. This practice may lead to any of the other practices listed below (from 2 to 8), creating reasons which would permit them to be qualified as corruption.
2. Propose contracts based on (or which contain) **false needs**[5]. In some cases these contracts are a technique to compensate a contractor for "previous favours"[6].
3. Propose contracts on the basis of **"induced" or** technically **unjustified needs**[7] **or which are not backed up by cost-benefit analysis**[8] (in particular in the case of investments).
4. Propose contracts that include service **provisions** already covered by other contracts[9] or carried out by the institution's own public employees, without adequate justification.
5. Propose the **automatic procurement of a** currently outsourced **service** with no re-evaluation of the need, or by default rule out provision of the service with the institution's own resources.
6. Draw up contracts that **overstate the real needs** of the institution **or** which include elements that exaggerate **the costs**[10].

[4] These and the other practices presented in this document are often drafted so briefly or in such a way as to, on occasions, consider the practice itself irregular, fraudulent or corrupt, depending on the motivation that led to that practice and, often, this appreciation will require the practice to be evaluated, case by case. See the differences between the three concepts in *Working Documents* Nº 2.

[5] For example, supply of technological equipment for a healthcare facilities which are not recognised for that speciality or which has no staff with the necessary specialisation to employ it.

[6] For example, award contractors low-value minor contracts with a contractual object that is impossible to check once some time has passed following its supposed performance: cleaning of gutters or riverbeds, cutting grass on verges etc.

[7] For example, the acquisition of an ICT solution which the responsible unit does not consider technically necessary but which has been "recommended" to the policy-maker of the institution in question.

[8] For example, innovative technology introduced into a public service through a pilot trial which creates that specific need and which it is proposed to procure without evaluating all the costs of the life cycle of that technology (related software, specific software to connect to other hardware used in that public service, maintenance, spare parts, etc.).

[9] For example, include the service of deposit and custody of keys in contracts for guards and security staff, when there is a public employee already carrying out that service or it is superimposed with identical provisions included in another contract.

[10] For example, public works contracts that include overstated lump-sum items for incidentals ("buffer"); that contain measurements of units that distort the real dimensions or include in the break-down of measurements the term "others"; or that include unnecessary structures (e.g. a geotechnically unnecessary lining in a tunnel which will subsequently not be executed but would have been paid for had the supervision not worked).

7. Draw up **contracts that are impossible to implement** or with **technically obsolete or non-approved solutions** [11].
8. Draw up **contracts with vague definition**[12] **or lacking technical quality**[13] which facilitate the materialisation of other risks during the bidding phase (for example, during evaluation of the bids) or during performance (for example, substantial modifications of the services procured).

II. Draw up contracts that unduly curtail participation or fair competition

Vulnerabilities

In drawing up contracts where the need and appropriateness to procure services is unquestionable, there is a risk of preparing a procurement contract which unduly curtails access to the tendering process in conditions of equality, non-discrimination and fair competition.

Respect for all these principles, essential to achieve the most economically advantageous bid, often **enters into conflict with the public institution's need to**:

- **quickly** initiate execution of the contract, for various possible reasons (events that have arisen, planning deficits, etc.) or
- **ensure the competence of the future contracting company and proper execution of the contract** (for example, when it is known that tenders will be submitted by companies with which the institution has had bad experiences in the execution of previous contracts).

A second vulnerability already mentioned in the previous section on risks may be added to this intrinsic tension in the preparation[14] process. This refers to the margin of **discretion of technical judgment** as to which tender is the most ideal and efficient: choice of the type of contract, the award procedure, the contract term, the selection criteria to be applied to bidding companies, the criteria employed to assess the quality-price relationship of bids and the evaluation rules or formulae, the more or less strict conditions of execution that will have an effect on the estimated price of the contract, and so on.

The third vulnerability is the **opportunities for external influences or internal pressures to favour private interests** with respect to that technical judgement.

[11] For example, process a project to install lighting in a tunnel in which an installation was designed that will be outside the regulation pending approval in a few days, in exchange for a bribe in the form of a commission.

[12] For example, imprecise definition of the contractual object for a technological solution because of uncertainty about what is required (the functional analysis has not yet been done) but results are urgently needed, so the functional analysis will be conducted by the contractor during performance of the contract.

[13] For example, public works projects with: reduced topography which does not include the contour conditions of the works and requires modification of the excavation system envisaged in the project, with a considerable overrun; inexistent or insufficient geotechnical assessment; layout plans drawn at twice the scale of the topography, leading to a mismatch of thousands of m^3 of embankment or the expropriation of existing businesses, etc.

[14] Many public managers informally refer to this as the "dilemma between legality and efficiency", or similar expressions.

Risks to integrity

Consequently, within this area may be found the risks of:

- **not detecting conflicts of interest** of the public servants who participate directly or indirectly in the procurement process;
- **not detecting offers of bribes, demands for commissions or other illegal benefits**, in exchange for influencing preparation of the procurement contract;
- **choosing procedures that unjustifiably curtail** participation;
- **preparing specifications that provide an unnecessary margin of discretion** to the contract awarding committee when it evaluates the bids, in prejudice to the precision required of the bidding companies to prepare their tenders in close accordance with what will really be evaluated;
- **designing specifications that favour or prejudice certain known economic operators** (thus violating the principles of non-discrimination, equal treatment, participation and the safeguard of fair competition) with the selection of certain elements of the specification[15];
- **designing specifications that facilitate collusive behaviour** (requirements to participate in the tender, definition of lots, etc.);
- **preparing specifications that enable the contracting company to become a *de facto* "contracting authority"** through subcontracting.

Examples of detected practices

Some of the irregular, fraudulent or corrupt practices are listed below, organised into homogeneous groups.

Impartiality and independence

1. Participating in decisions related to the technical preparation of the procurement, or in any other supervisory or control task of same, when in a situation of conflict of interest.
2. Influencing any of the technical tasks associated with the drafting, supervision or control of the specifications when in a situation of conflict of interest.
3. Asking the current provider to prepare the technical specifications for the next tender.
4. Relying upon certain providers during preparation of the technical specifications[16], enabling them to influence composition of the specifications in their favour.

Contractual object and definition of lots

5. Describing the supplies or services that are the object of the contract in a manner tailored to suit one particular economic operator.
6. Artificially subdividing the contractual object[17] so that the estimated value of the

[15] An extreme case would be designing specifications 'made to measure' for one economic operator in particular.

[16] Art. 115 of the LCSP on preliminary market consultations precisely regulates the way to obtain technical advice to prepare contracts and to establish the conditions and restrictions necessary to safeguard fair competition and conditions of equality and non-discrimination when, exceptionally, consulting economic operators active in the market and thus susceptible to becoming tenderers in that procedure.

[17] Examples are many and varied: in municipal street or road urbanisation projects, subdivide the paving, lighting and urban furniture into different contracts; in recurring service needs, draw up minor annual (or even six-monthly) contracts, violating the principle of fair competition and

procurement enables the choice of procedures such as:

- direct award (low-value, minor contract);
- shorter procedure, fewer advertising obligations or with less rigorous control or appeal possibilities (non-harmonised contract).

7. In ordinary, open or restricted procedures, not defining precisely the service to be contracted through the use of various practices: from an extremely vague or difficult to understand description which discourages or demotivates submission to the tender[18], to choosing the wrong CPV code, which hinders the participation of economic operators from other EU countries.
8. Routinely defining lots that favour very big economic operators, knowing that given the characteristics of the market the service will end up being subcontracted to numerous SMEs chosen by the successful tenderer with criteria that fail to respect equality and freedom of access to public procurements.
9. Designing lots that unjustifiably favour certain economic operators with, for example, a very "individual" distribution capability in a certain area, or with a particularly "specific" set of supplies or services.

Tender base budget, estimated value and price

10. Establishing a base budget below market prices thus discouraging participation in the bidding phase (and opening the door to making modifications in the performance phase).
11. Incompletely calculating the estimated value of the contract to be able to choose award procedures with less advertising and a solely internal appeals procedure (without special appeal).

Candidate or tenderer selection criteria

12. Establishing unjustified or disproportionate selection criteria for participation in the tender that limit participation or favour certain economic operators; for example, requirements of classification, or of financial or technical competence which are disproportionate to the contractual objective.
13. Always inviting the same providers in procurement procedures with negotiation or minor contracts.

Procedures, processing and time limits

14. Unjustifiably choosing the negotiated procedure without publication alleging, for example, the non-existence of competition for technical reasons in certain technological services contracts, without sufficient grounds.
15. Unjustifiably choosing the urgency procedure.
16. Fixing time limits for receipt of tenders that hinder participation, because they allow insufficient time to prepare proposals (especially complex contracts) or because they will coincide with popular holiday periods.

Award criteria

17. Drafting vague award criteria that require an exercise in interpretation in the bidding

hindering the economies of scale that lead to bids that are economically more advantageous).

[18] Moreover, it increases the likelihood of risks in other phases of the procurement process, such as assessing proposals submitted in the bidding phase as irregular or unacceptable (Art. 167, e of the LCSP) and facilitating a new, subsequent tender in which it is possible to choose the negotiated procedure without publication.

phase. This interpretation may prejudice a tenderer who would have approached the proposal in a different way if the criteria had been properly specified or, in the worst of the cases, will create opportunities to favour or prejudice some of the bidding companies.

18. Establishing mathematical formulae for calculating scores that can be awarded for the price criterion that distort proportionality when transforming the financial bid into points; for example, weighting the differences between bids[19] in a way that awards such similar scores that the competition ends up being decided by evaluation criteria submitted to value judgements.
19. Establishing formulae for calculating the scores that can be awarded for price criterion which violate or present risks for the principle of awarding the contract to the most economically advantageous offer, because they enable the award price to be raised, for example, those formulae that give more points to the mean bid[20] (which, at the same time, fosters collusive behaviour that may lead to the exclusion of non-concerted bids by qualifying them as abnormally low or reckless).
20. Establishing award criteria to allocate scores assessable through value judgement without rules, parameters or sub-criteria, or described so vaguely or imprecisely that they not only complicate this task of the contract awarding committee, but also create opportunities to award a biased or arbitrary score.
21. Stipulating in the specifications the admissibility of variations or improvements without establishing criteria to assess them or price limits that avoid the proposal of improvements unrelated to the supplies or services that are the object of the contract.

III. Leak privileged information

Vulnerabilities

This area of risk revolves around the **confidentiality** of information related to the procurement being prepared; information which has not yet been made public but is known by the person because of the post or position he or she occupies.

From the moment the procurement is proposed, sometimes much before the formal opening of a tender dossier, until all the tasks involved in drafting the specifications are completed, public institutions handle a lot of **information on this procurement that is not made known to all the economic operators until publication of the procurement notice or invitation to tender** (or, on occasions, until publication of the intention to conduct preliminary market consultations).

It is particularly important for the subsequent bidding phase that all the economic operators have access to the same information at the same time and in the same conditions, to ensure equality and non-discrimination of the future candidates or tenderers.

[19] Example of formula to award the score or points (Pi), the difference between bids weighted at 25%: Pi=Pmax [1-0.25((Oi-Omin)/Omin)], where Oi is the price of the bid being evaluated and Omin the lowest bid.

[20] Example of formula which, instead of using as reference the bid with the lowest price (Omin), uses the mean of the bids (M): Pi= Pmax [1-((Oi – M)/M)].

Risks to integrity

Consequently, within this area may be found the risks of:

- **not detecting conflicts of interest** of public servants who have access to information about the procurement being prepared and not yet made public;
- **not detecting offers of bribes, demands for commissions or other illegal benefits** in exchange for privileged information;
- **Information being advanced** to certain economic operators **before** it has been made public, at least, in the legally provided media;
- **providing information** which is not expected to be included in the specifications but which may condition participation or may contribute to the recipient preparing a better bid.

Examples of detected practices

Some of the irregular, fraudulent or corrupt practices detected by the Anti-Fraud Office that enable these risks to materialise are:

1. Giving the current contractor informal access to information that has not yet been published, thus granting that contractor a competitive advantage when preparing the tender it will present in the bidding phase.
2. Communicating confidential information through informal personal contacts with known potential bidding companies or people related with them.
3. Making informal market consultations (the subject of the consultation has not yet been made known to all possible interested parties, nor have the reasons been published for the choice of operators active in the market and selected as advisors) to obtain technical advice for preparing the specifications, thus advancing information about the characteristics of the procurement solely to the chosen operators.
4. Arriving at informal agreements about the future procurement with an economic operator the public institution wants to bid for the contract; for example, assuring the operator that the contract extension provided for in the specifications as a possibility will definitely be implemented (irrespective of how the contract is performed), meaning duration of the contract will actually be four years rather than the two initially stipulated.
5. Passing privileged information to the bidding companies or advising them on preparation of their proposals in exchange for cash considerations, gifts or the hiring of a family member by those companies or others linked to them.

IV. Award directly to an economic operator outside the procurement procedure

Vulnerabilities

Once the contracting authority has taken the decision to contract, another significant area of risk in public procurement exists that revolves around the **opportunity for pressure to be applied to award *de facto* without recurring to the markets** in search of the best proposals because:

1. immediate implementation of the service provision is required and procurement procedures take up a lot of time; or
2. the intention is to favour one economic operator in particular.

Risks to integrity

Consequently, within this area may be found the risks of:

- **not detecting conflicts of interest** that may originate pressure to award *de facto*;
- **not detecting offers of bribes, demands for commissions or other illegal benefits**, in exchange for *de facto* awards;
- **avoiding initiation of a new tender dossier** and **taking advantage of an already formalised contract** to obtain the provision;
- **distorting the processing** of a procurement procedure;
- **improperly replacing the processing of a tender with other**, non-competitive **forms of collaboration**, such as agreements.

Consequently, if these risks materialise the rights of economic operators to access public tenders and receive equal, non-discriminatory treatment from the contracting authorities are violated, and the institutions themselves put at risk (or abandon) their duty to obtain the most economically advantageous offer for procurement of that service.

Examples of detected practices

Some of the irregular, fraudulent or corrupt practices are listed below.

1. Continuing to execute the supplies or services that are the object of the contract (and paying the price) beyond the validity date provided in that contract, making *de facto* award of the new provision to the previous (or existing) contractor.
2. Directly awarding maintenance services to the economic operators that had been awarded a supply contract.
3. Directly commissioning the main provider in a works contract additional provisions that had not been included in the award and should have been the subject of a new tender.
4. Acquiring excusive pharmaceutical products without calling for tenders.
5. Taking advantage of an imprecise definition of the contractual object already being performed (or described in terminology that only experts in the subject can interpret) to satisfy a new need through the same contract, avoiding the opening of a new tender dossier.
6. "Disguising" a dossier in cases where the company the authority wants to contract is already chosen and the intention is to simulate the procedure.
7. Using the urgency procedure for reasons other than the exceptional circumstances provided in the LCSP.
8. Directly awarding to a contractor through a collaboration agreement, when the provision meets the characteristics of a service contract subject to the rules of procurement.
9. Commissioning the provision to an organisation that does not meet the requirements to be considered an instrumental mean. Where this practice occurs, the likelihood increases that a good deal of the provision will end up being subcontracted.
10. Awarding a low-value minor works contract to a contractor in exchange for work to be carried out in the home of a politically designated official.

3. Risks in the bidding phase

The bidding phase has traditionally been the most regulated and supervised and the one with more obligations for transparency and accountability. It is in this phase that

fundamental decisions are taken with respect to who should participate t in the competitive procedure and to whom the contract will be awarded.

Despite increased transparency and improved requirements for justification of decisions having significantly reduced opportunities for risk, irregular, fraudulent or corrupt practices continue to be detected in the four areas described below.

V. Fail to avoid anti-competitive practices

Vulnerabilities

This area if risks revolves around the **opportunities for distortion** (within or outside the contracting authority) of tightly regulated procedures, **in order to**:

1. **impede or restrict the access** to tender of economic operators active in the market; or to
2. **distort genuine competition during preparation of the final bids.**

Without genuine competition, effective procurement cannot be guaranteed. Hence the obligation of contracting authorities to ensure the right of access to public tenders in conditions of equality and non-discrimination, and to safeguard free and fair competition at all times.

Risks to integrity

Several risks are included in this area, such as:

- **not detecting conflicts of interest** of public officials who respond to requests for information or clarifications during the period for presentation of bids, who are responsible for safekeeping bids received or, in negotiated procedures, who know about the negotiations with each candidate company or tenderer;
- **not detecting offers of bribes, demands for commissions or other illegal benefits,** in exchange for privileged information during the bidding phase;
- creating **deficits or asymmetries in the information provided to** economic operators;
- **not detecting collusive practices** or not responding to them adequately;
- **not protecting the confidentiality** of proposals until their public opening;
- **distorting the negotiation**, in those procedures that include it, prior to the presentation of final bids.

Examples of detected practices

Some of the irregular, fraudulent or corrupt practices detected that enable these risks to materialise are listed below.

1. Non-compliance with the obligations relating to advertising in the terms and media provided.
2. Hindering access to the complete documentation candidates require to prepare their proposals.
3. Not making public information about characteristics of the service object of the call for tenders (which is indeed known by the contractor currently providing that service) which, if it were published, would enable other economic operators to prepare more competitive proposals.
4. Not disclosing publicly information related to clarifications requested by operators with respect to the published documentation (advertisement or specifications).
5. During the term for preparation and presentation of proposals, clarifying

specifications on the basis of requests to do so from certain economic operators (for example, about award criteria or evaluation rules) and not proportionately extending the deadline so that all potential tenderers can take this information into consideration when preparing their proposals.

6. Not detecting collusive practices[21], among tendering companies or awarded companies in a framework agreement; for example, proposals of coverage (also known in Spain as a safeguard or support agreement) which are higher than has been agreed to take the contract, or are simply unacceptable.
7. Failure to communicate indications of collusion to the corresponding competent authority[22] (in Catalonia, the Catalan Competition Authority); for example, incoherent and unjustifiable bids from one same tendering company for several lots of a contract, which could red-flag an agreement to share the lots among various economic operators.
8. Failure to carry out effective negotiation with tenderers in those procedures that include the obligation to negotiate, precluding the possibility of achieving the most economically advantageous bid.
9. Leaking information about proposals received from other tenderers during the presentation period.
10. Making irregular changes in the documentation submitted by certain tendering companies during the presentation period or at any other time prior to the public opening of the envelopes.

VI. Accept or exclude tenderers in a biased manner

Vulnerabilities

This area of risks revolves around the **opportunity to favour or prejudice certain economic operators by discerning which candidates or tenderers may participate** in a tender; a judgment that will lead to the decision to accept or exclude them from the procedure.

Discretion in this particular judgement has traditionally been strictly defined thanks to the principles of objectivity, impartiality and independence that must govern the procedure.

Efforts are made to ensure **objectivity** through the prior requirements of financial and technical competence of the operators, proportional to the characteristics of the service provisions to be contracted; specific

[21] The provision established in Art. 1.1. of law 15/2007, of 3 July, on the defence of competition: "prohibits any agreement, decision or collective recommendation or any concerted or consciously parallel practice that has, as its object or effect the prevention, restriction or distortion of competition in all or part of the Spanish market, and in particular those that: directly or indirectly fix prices or any other commercial or service terms; limit or control production, distribution, technical development or investments; share markets or sources of supply; apply dissimilar conditions to equivalent transactions in commercial or service relations, thereby placing some competitors at a competitive disadvantage; and make the conclusion of contracts subject to the acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts."

[22] Obligation provided both in the LCSP (Arts. 69.2, 132.3 and 150.1) and Law 15/2007, on the defence of competition.

grounds for exclusion; and the obligation that admission or exclusion is based on the above and appropriately reasoned.

To ensure **impartiality and independence,** the legislator:

- has separated the task of making this technical judgement from the people deciding the award (the contracting authority). To increase impartiality, in some award procedures the decision to accept or exclude falls to a technical collegiate body, the contract awarding committee, instead of leaving the decision in the hands of a single individual;
- has obliged the contracting authority to prevent, detect and remedy conflicts of interest.

Not all award procedures require a contract awarding committee, and in public sector organisations that are not Administrations, the contract awarding committee is optional.

Risks to integrity

Thus, within this area may be included the risks of:

- **not detecting conflicts of interest** of the people who take part in the decision to accept or exclude a bid from the tender procedure (or hold hierarchical or operational power over the latter);
- **not detecting offers of bribes, demands for commissions or other illegal benefits,** in exchange for influencing the decision to accept or exclude a bid from the procedure;
- **applying the selection criteria in an irregular manner** so as to favour or prejudice certain candidates or tenderers;
- **rejecting tenders involved in a presumption of abnormality** without sufficient evaluation or motivation.

Examples of detected practices

Some of the irregularities and fraudulent or corrupt practices detected are listed below.

1. Not abstaining from participation on a contract awarding committee when affected by a conflict of interest.
2. Attempting to persuade members of a contract awarding committee to accept or reject bids in an irregular manner.
3. Accepting a bid from a tenderer that does not fulfil the financial or technical competence requirements.
4. Accepting a bid from a tenderer that is prohibited from contracting, due to:
   - having committed misrepresentation when making the sworn statement pursuant to Art. 140 of the LCSP;
   - the natural person or administrators of the legal entity having incurred in situations of incompatibility;
   - having contracted personnel who have not completed the “cooling off” period legally established after leaving their public office and before rendering services in the private sector that are directly related to their prior responsibilities
5. Accepting a bid which should be excluded due to the tenderer forming part of an irresolvable conflict of interest.
6. Accepting a bid which includes conditions made by the tenderer that do not comply with the specifications.
7. Accepting a bid received after the deadline.
8. Accepting a bid that shows signs of collusion or corruption; for example, three bids with similarities that go so far as to

reproduce exact paragraphs, including spelling mistakes, which would red-flag the possibility of hedging.

9. Accepting a bid exceeding the tender budget.
10. Excluding a bid by qualifying it as abnormally low without sufficient explanation or justification.

VII. Evaluate tenders in a biased manner

Vulnerabilities

This area of risks is structured around two vulnerabilities:

1. The **inherently subjective nature of valuation of criteria, the quantification of which depends on a value judgement**; valuation that may end up determining the selection of one bid or another as the choice of the most economically advantageous offer.

2. The **opportunities to favour or prejudice certain economic operators** during the technical evaluation process.

To **objectify** that judgement, it must now mandatorily be based on criteria and precise valuation rules stipulated in the specifications, which should enable determination of the best quality-price ratio. Thus the likelihood of this risk is, to a large extent, conditioned by the decisions taken during procurement preparation (see areas of risk I and II).

Attempts to ensure **impartiality and independence** in this evaluation have been described in the previous area of risks (separating technical evaluation from award resolution, and establishing clear obligations as regards conflicts of interest). These two principles are fundamental when assessing, scoring and organising the proposals received in descending order with respect to the award proposal the contract awarding committee should submit to the contracting authority or to the services that report to the latter.

However, the risk analysis workshops organised with public administrators have stressed that **it is difficult for members of the contract awarding committee to consider solely the information contained in the proposals, without taking into consideration previous experience** with those tenderers contracted on prior occasions, both in the negative as well as in the positive case.

The contract awarding committee's increased obligations for transparency and to state the reasons for a decision should contribute to reducing opportunities of subjectivity, partiality and illegal external influences when evaluating bids, both in the sense of favouring or prejudicing certain tenderers. However, inherent vulnerabilities remain – there is no such thing as zero risk – and the possibility of the risks listed below materialising has not disappeared.

Risks to integrity

This area includes such risks as:

- **not detecting the conflicts of interest** of people who participate in evaluation of the proposals (risk of partiality) or hold hierarchical or operational power over the latter (risk of dependence);
- **not detecting offers of bribes, demands for commissions or other illegal benefits,** in exchange for favouring or prejudicing a tenderer during evaluation of the proposals;
- **carrying out an irregular application of the procedure to evaluate proposals or the**

award criteria and their valuation rules in order to favour or prejudice certain candidates or tenderers;

- **making value judgements without the established minimal guarantees of objectivity and impartiality** (adequate and reasoned explanation of the valuations and, in the cases established in law, issued by a duly constituted committee of experts);
- **Modifying the award criteria** or their valuation rules, establishing different rules from those initially provided to the tenderers to prepare their proposals.

Examples of detected practices

Some of the irregularities and fraudulent or corrupt practices detected are listed below.

1. Not abstaining from participation on a contract awarding committee when affected by a conflict of interest.
2. Not abstaining from conducting a technical evaluation for a contract awarding committee when affected by a conflict of interest.
3. Attempting to influence a person who is conducting a technical evaluation of the proposals, for example, to prevent the tender from being declared void.
4. Accepting an envelope containing money in exchange for favouring award to a certain tenderer.
5. Evaluating the automatically quantifiable criteria (mathematical formula) before those subjected to value judgement, thus inverting the order of valuation that seeks to ensure impartiality in the valuation of the latter.
6. Revising in the "second round" the score for criteria evaluated by means of value judgement in order to improve the score of the proposal that is to be favoured.
7. Giving a score to the award criteria quantifiable by value judgements without justification (or without sufficient justification), through negligence or to favour or prejudice a certain tenderer.
8. Not subjecting qualitative criteria to the valuation of a duly qualified committee of experts, in cases where this is mandatory.
9. Creating a sub-criterion not included in the specifications, to justify a determined distribution of points for that criterion.
10. Applying score weighting among sub-criteria that were not weighted in the specifications.
11. Submitting an award proposal to the technical selection body in which the company proposed is not the tendering company that heads the list with the best offer.
12. Accepting improvements which the specifications did not provide for, discriminating against tenderers that did not do so because they were not asked for.
13. Accepting improvements not related to the contractual object.
14. Assessing improvements arbitrarily and without providing reasons, or in a way that favours a certain tenderer.
15. Assessing improvements employing criteria not provided in the specifications.

VIII. Award the tender or formalise the contracts in an irregular manner

Vulnerabilities

This area of risks revolves around three vulnerabilities inherent in this final stretch of the bidding phase:

1. A certain **margin of discretion** for the contracting authority to award the

contract. This margin originates in the contracting authority's capacity to **decide**:

- to separate itself from the award proposal submitted by the contract awarding committee or the technical unit attached to that committee;
- not to award or sign the contract, or discontinue the award proceedings prior to formalisation.

2. **The opportunity** to include clauses in the document formalising the contract that could involve an alteration of the terms of the award, or could even prove detrimental to the general interest.
3. The **coincidence in the same person of two duties that inherently clash** and place the contracting authority in a situation of conflict: that of deciding who to award the contract to and that of ruling on appeals against its own award agreement, thus the contracting authority becomes both judge and party[23].

Consequently, the legislator establishes **limits** (1) **to the margin of discretion,** in the shape of obligations to state justification for these decisions (some of which have limitations) and for transparency, and (2) **to opportunity**, by prohibiting the introduction of clauses that involve an alteration of the terms of award, and (3) **to the contracts in which the hearing of appeals** against the award decision **is attributed to the same contracting authority** – insofar as contracts eligible for special appeal, where resolution of the appeal is handed down by a different body (in Catalonia, the Catalan Public Sector Contracts Board).

[23] On inherently conflictive duties, see a succinct explanation in the Catalan Anti-Fraud Office, 2016: p. 31 or in Stark, 2001: pp. 335-351.

Risks to integrity

This area includes such risks as:

- **not detecting the conflicts of interest** of the person who creates the contracting authority, the people who participate in hearing appeals against the award agreement or in formalisation of the contract;
- **not detecting offers of bribes, demands for commissions or other illegal benefits, for the person** who creates the contracting authority, the people who participate in hearing appeals against the award agreement or in formalisation of the contract;
- **unjustifiably awarding** the contract to a tenderer that has not submitted the most economically advantageous offer;
- **not awarding or signing** the contract or **unjustifiably** discontinuing the award proceedings;
- **processing or resolving administrative appeals** against the award in an **irregular manner**;
- **formalising** the contract in an **irregular manner**.

Examples of detected practices

Some of the irregularities and fraudulent or corrupt practices detected are listed below.

1. Awarding the contract to a tendering company that did not submit the best offer, when a material error has occurred in the proposal to the contract awarding committee; for example, in adding the scores incorrectly, or in proposing a company which is not the tendering

company that heads the list with the best offer.

2. Awarding the contract to a tendering company against the proposal of the technical services attached to the contracting authority (where there is no contract awarding committee) without technical justification for this decision.
3. Hindering or restricting access to information about the procedure by a tendering company which was not the successful tenderer and could appeal against the award decision.
4. Introducing changes into a clause when formalizing the contract which are not substantiated by accepted improvements or by other legal reasons, and which alter the terms of award (illegitimate negotiations).
5. Informally contacting the economic operator which should be the successful tenderer for a contract or a lot, with the view to convincing that operator to withdraw in favour of another tenderer, with the promise of "arranging" future tenders.

4. Risks in the performance phase

This phase begins with execution of the contract to obtain the service provisions the public institution needs, and ends with the extinction of all contractual liabilities.

Though the proper[24] provision of services is the goal of the procurement — the previous phases are merely instrumental— this phase often ends up being the most overlooked in terms of appeals. However, the risk analysis workshops with administrators and reports drawn up by supervisory bodied have highlighted numerous irregularities.

IX. Receive a service other than that contracted

Vulnerabilities

This area of risks revolves around two vulnerabilities inherent in performance of the contract.

From the moment a service provision is contracted in the markets there exists dependency on a third party, the contracting company, to obtain the agreed quality of service or work, the quantity of supplies or service contracted and, in general, provision in the time and at the costs agreed. This latter point may offer **opportunities for non-compliance** due to a number of factors which will be analysed in detail in future *Working Documents*; for example, deficiencies in supervision of the performance, lack of precision with regard to the provision of the service or works or the performance conditions set out in the specifications: the greater the precision, the greater the facility to detect or accredit contractual non-compliances. Thus, this area of risk is highly conditioned by the materialisation of some of the risks of the first phase (especially areas I and II).

Furthermore, **opportunities** may arise of **external influences or internal pressures not to detect the non-compliances**, or not to remedy them appropriately.

[24] Understanding by *proper* that which is respectful with the principles of effectiveness, efficiency, legality, transparency and integrity.

Risks to integrity

Therefore, this area includes a broad and diverse range of risks, such as:

- **not detecting the conflicts of interest** of the people who participate in supervision of the performance or those who hold hierarchical or operational power over the latter;
- **not detecting offers of bribes, demands for commissions or other illegal benefits, in exchange for** not properly supervising performance;
- **not detecting non-compliances** in performance of the procurement or of any of the agreed performance conditions;
- **recognising as executed or delivered** (by means of certification or any other equivalent formula of conformity) **anything that does not correspond** to reality;
- **accepting** irregular or unjustified **price increases**;
- **not remedying deficiencies** detected during performance of the contract.

Examples of detected practices

Some of the irregular, fraudulent or corrupt practices detected are listed below.

1. Not detecting the non-performance of works or services or delivery of supplies established in the contract; for example, not detecting embankments raised in one-metre layers with insufficient compaction to the point where significant settlement and cracks begin to appear in a stretch of road.
2. Not detecting the substitution of certain works or supplies for others that do not meet specifications; for example, delivery of office chairs with ergonomic features inferior to those presented in the proposal (but which are invoiced as agreed in the contract).
3. Not demanding rectification of a non-compliance with the contract terms; for example, detecting the non-execution of a compulsory impregnation coat when paving works of a roundabout are almost finished and not demanding demolition of the work in order to execute the impregnation and ensure proper functioning of the paved surface.
4. Certifying fictitious measurements: for example, exaggerating the amount of earthworks necessary for a project.
5. Certifying a number of hours worked by a professional with qualifications stipulated in the specification, when in fact the work was done by someone less qualified.
6. Certifying many more hours of service by a professional than those actually worked.
7. Proposing or accepting price discrepancies that are inflated, disproportionate or not market prices; for example, agreeing discrepant prices that are double those of the market price bank of the year the works are executed, in exchange for a bribe in the form of commission equivalent to 3% of the work executed.

X. Unjustifiably modify the contract

Vulnerabilities

This area of risks revolves around:

1. the **opportunities for partiality in judging when modifications** are required in the service provision – or the terms in which it should be executed – that are essential due to incidents or unexpected events that have arisen during performance of the contract, and which **alter the initial**

agreement to the point of converting it into a different contract;

2. the **opportunities for external influences or internal pressures** to modify a contract without justification.

The legislator seeks to reduce these opportunities through obligations of transparency, reasoned decisions, internal supervision and regulating the limits to contractual modifications, extensions and complementary contracts.

However, it should be borne in mind that, on accessions, these modifications are not formalised, they simply happen.

Risks to integrity

This area brings together the following risks:

- **not detecting the conflicts of interest** of the people who participate in the proposal or preparation of any contractual modification, or who hold hierarchical or operational power over the latter;
- **not detecting offers of bribes, demands for commissions or other illegal benefits**, in exchange for modifying the contract without justification;
- approving **modifications that affect the essential content** of the contract: that alter the object or overall price; change the balance of the contract to the benefit of the contracting company; introduce conditions that would have enabled the selection of other candidates or of a different successful tenderer in the bidding phase, etc.;
- accepting ***de facto* modifications** of the contractual object or performance conditions;
- approving or not detecting, where applicable, the unjustified or irregular **substitution** of the **successful tenderer** or of the contract executor (if it is subcontracted);
- approving unnecessary or unjustifiable **extensions** of the contract;
- approving unjustified or irregular **complementary** contracts.

Examples of detected practices

Some of the irregularities and fraudulent or corrupt practices detected are listed below.

1. Proposing modifications that exceed the initial value by more than even 50%.
2. Approving the modification of works contracts where the supervision reports are unfavourable.
3. Approving a modification requested by the contractor which involves a major reduction in the quality of the work without reducing the price to be paid; for example, the modification of a bridge, initially designed as cable-stayed, to replace it with one of mixed structure comprising reinforced concrete and steel, including reinforcement impossible to execute, a project which represented an extremely significant technological regression with respect to similar contemporary structures.
4. Performing services not initially provided in the specifications, taking advantage of extremely vague or imprecise contractual objects or performance descriptions.
5. Accepting or not detecting, as the case may be, subcontracting of the entire contract (for example, for works) or subcontracting it in a manner contrary to that established in the specifications.
6. Accepting or not detecting, as the case may be, the assignment of a contract when the requirements to do so are not met.

7. Arranging extensions despite dissatisfaction with the quality of the service already received, because these extensions had been "guaranteed" to the contractor in previous phases.
8. In contracts deriving from a framework agreement, agreeing extensions with the provider outside that contained in the clauses of that agreement.
9. Proposing extensions immediately after formalisation of the contract, before it is in fact possible to assess whether such extensions are appropriate.
10. Proposing complementary contracts where no justification exists that they are necessary for performance of the work as it was described, nor that the work can be technically or economically separated from the initial contract.
11. Proposing contracts based on spurious needs to award complementary contracts to the successful tenderer of the work being executed.

XI. Authorise unjustified or irregular payments

Vulnerabilities

This area of risks revolves around two intrinsic vulnerabilities:

1. **Opportunities for partiality in judging whether what is invoiced coincides with reality and with the payment conditions legally provided** (in the contract or in the regulations). Thus this area of risks is directly linked to the two previous areas (areas IX and X: fraudulent certifications, inflated price discrepancies, irregular modifications, and so on), or to that of directly awarding the contract to an economic operator outside the procurement procedure (area IV). If risks from those areas materialise, the likelihood of authorising unjustified or fraudulent payments increases proportionately.
2. The moment of granting authorisation provides an **opportunity for external influences or internal pressures** to be exerted **to alter the conditions and even the amounts** of the payments.

Risks to integrity

Thus, within this area the following risks are included:

- **not detecting the conflicts of interest** of people who participate in the authorisation of payments or who hold hierarchical or operational power over the latter;
- **not detecting offers of bribes, demands for commissions or other illegal benefits,** in exchange for irregular or unjustified payments**;**
- **advancing payments** before the contracting company is entitled to them;
- **authorising irregular** or fraudulent **payments**.

Examples of detected practices

Some of the irregularities and fraudulent or corrupt practices detected are listed below.

1. Exerting pressure for payment to be authorised before execution is initiated; for example, so that the successful tenderer can invoice and be paid at the end of this financial year for a service provision that will not begin to be executed until the following year.
2. Entering into fraudulent agreements for reasons outside the scope of the contractual object; for example,

payments to accelerate the works so that a project can be inaugurated prior to some elections.

3. Not detecting and paying invoices for the supply of goods not delivered or for work or services not performed.
4. Accepting invoices contrary to the contractual clauses; for example, invoicing fees for the drawing up of civil works projects according to parameters of the execution budget included in the draft project or the information survey instead of following the calculation parameters contained in the specifications regulating the award, so that the amount is higher than that agreed.
5. Shifting costs between contracts; for example, invoice in a service contract the time of an expert used for another contract with the same contractor.

XII. Fail to demand accountability for contractual defaults

Vulnerabilities

This area of risks revolves around two vulnerabilities:

1. the **opportunities for external influences or internal pressures** not to demand accountability; and

2. the **opportunities not to institute** (or not to resolve adequately) **proceedings seeking accountability** from:

   - a contracting company that fails to comply with contractual conditions; or
   - people from the contracting authority who have incurred in irregular, fraudulent or corrupt practices (or who have facilitated same).

Risks to integrity

Thus, within this area the following risks are included:

- **not detecting the conflicts of interest** of the people responsible for proposing or instituting the appropriate proceedings seeking accountability, or of the people who hold hierarchical or operational power over the latter;
- **not detecting offers of bribes, demands for commissions or other illegal benefits,** in exchange for not seeking accountability for contractual non-compliances;
- **not demanding the legally provided accountability of the successful tenderers** for non-compliance with contractual law or the contractual specifications;
- **not demanding accountability of the public servants** who incur in irregular, fraudulent or corrupt practices, or who have facilitated same.

This lack of demand for accountability increases the likelihood that any of the risks identified in the 11 previous areas will materialise in subsequent procurement processes organised by that contracting authority.

Examples of detected practices

Some of the irregularities and fraudulent practices detected are listed below.

1. Not proposing or not instituting the procedure to impose the penalties provided in law for non-compliance with the contract, for example:
   - for reducing unit costs due to insufficient quality, when this possibility is recognised in the technical prescriptions document;

- to penalise non-compliance with execution deadlines attributable to the contractor.

2. Not ordering a review *ex officio* when reasons that justify one are detected or, if the initiated review procedure expires, not ordering its renewal when limitation on the infringement that justified it has not elapsed.
3. Not enforcing guarantees in the case of defects or hidden faults discovered following final acceptance of the work.
4. Prematurely returning performance guarantee bonds to provide the contractor with liquidity.
5. Not carefully assessing the possibility of claiming damages for collusive practices.
6. Not proposing or not instituting disciplinary proceedings (or allowing them to expire if they have been instituted) for non-fulfilment of obligations by public officials during the procurement procedure or patrimonial liability of the authorities[25].
7. Not lodging a criminal complaint or lawsuit against a public official who is known to have accepted a bribe from a contracting company and opting, simply, to invite that person to voluntarily resign from the institution.

5. What are the most likely and serious inherent risks in your organisation?

The intrinsic vulnerabilities exposed throughout this document make the risks it identifies possible; and the practices mentioned as examples are evidence of this.

That is why public institutions should **evaluate these 12 areas of risks to discover:**

1. **The likelihood of these risks materialising.** This likelihood can be assessed quantitively, by counting the frequency with which the practices listed as examples, or others that respond to the same risk, have appeared in the period selected for the assessment (the last five years is a term often employed). Some risk management methodologies choose a more qualitative assessment through groups of people who represent different roles and duties (and, thus, offer different perspectives) related to the area being assessed (procurement, in this case), to assess whether each of the risks is very likely, likely, or unlikely.
2. **The seriousness of the situation should the irregular, fraudulent or corrupt practices** that these risks give rise to occur. This seriousness can, in turn, be assessed quantitively (for example, through questionnaires), or qualitatively, asking members of the assessment group to judge whether the materialisation of each risk would be extremely serious, serious, or not very serious.

In accordance with these two criteria of likelihood and gravity, assessment of the risks presented sequentially through the 12 areas **enables:**

- a **comprehensive, orderly evaluation** of all inherent risks and, if necessary,

[25] Additional provision 28.2 of the LCSP, concerning responsibility of the authorities and officials at the service of the public administrations, relating to the infringement or misapplication of the precepts of the Law of Contracts does not demand, in the current text, disciplinary liability for the existence of gross negligence.

- a **prioritisation of the risks (or entire areas of risk) that require immediate management** in the event of there being many assessed with very high scores or qualified as very likely or extremely serious, and the resources available to initiate risk management are limited. For those areas or those risks considered very likely and extremely serious, designing and setting in motion measures that will form the prevention plan is urgent and cannot be postponed.

Effective preventive measures are those that act upon the factors that produce, strengthen and perpetuate risks. Hence the need to identify all the elements that contribute to a risk and design a measure for each one that reduces the likelihood of that risk materialising, until the point where the **residual risk** is tolerable for the institution.

Consequently, the next *Working Documents* explains what risk analysis actually is, what risk factors are and what risks organisations should look for. It also analyses the definition and types of risk maps and how risk factor maps facilitate systematic analysis of the risks that each institution should prioritise, with the aim of designing really effective prevention plans.

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