

ANNUAL PUBLIC PROCUREMENT SUPERVISION REPORT

**EXECUTIVE
SUMMARY**

(December 2019)

OIReScon

**OFICINA INDEPENDIENTE DE REGULACIÓN Y
SUPERVISIÓN DE LA CONTRATACIÓN**

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ANNUAL SUPERVISION REPORT

The Independent Office for Regulation and Supervision Procurement (**Oficina Independiente de Regulación y Supervisión de la Contratación - OIReScon**), created by the new Public Procurement Act (Ley de Contratos del Sector Público - LCSP), Act 9/2017, dated 8 November, on Public Sector Contracts, transposing Directives of the European Parliament and Council 2014/23/EU and 2014/24/EU, dated 26 February 2014 into Spanish law, **has approved its first report on the supervision of public procurement in Spain**, to be sent to the European Commission, thus fulfilling the mandate established in article 332 of the LCSP.

This annual supervision report contains the main conclusions of the control and supervision activity carried out by the competent Administrations, **a list of the main breaches detected by the external supervisory bodies** (Court of Auditors and External Control Bodies) and **internal** breaches in procurement matters (General Intervention Board of the State Administration, Regional Interventions, Local Interventions, Bodies competent to resolve special appeals in matters of contracting), **information on the prevention, detection and adequate notification of cases of fraud, corruption, conflict of interest** (agencies and offices for the prevention and fight against corruption), as well as **problems of collusion** detected (antitrust agencies).

It also includes **information on the most frequent sources of incorrect application of legislation or legal uncertainty**, through **supervision actions directly carried out by the OIReScon** and the establishment of indicators that allow their assessment and monitoring.

The lack of computer and personnel resources of the OIReScon has limited the scope of the report in some of its actions. Mainly the absence of a data exploitation tool, as well as the lack of access to the total data set of the State Public Sector Procurement Platform (Plataforma de Contratación del Sector Público del Estado - PLACSP), which has conditioned the analysis to the open data of the latter and the autonomous platforms.

MAIN RESULTS

A map of public procurement in 2018 is presented, in the first year of the new LCSP:

- In the Public Sector (state, autonomous and local), 119,553 contracts have been signed in 2018, not including small contracts.
- 47.32% of the procurement of the entire Public Sector corresponds to local entities.
- 76.31% of Public Sector procurement corresponds to the open or simplified open procedure.

- There is no aggregated data on minor public sector procurement and its systematic analysis is not possible.
- Certain economic and budgetary data on the quality of the existing contracting platforms cannot be given in relation to the savings between the bidding budget and the award price.

The existence of a **single public procurement database** is essential, reducing burdens on contracting bodies and bidders and minimising the risk of multiple information to supervisory bodies. There are also aspects that could be improved in the publicising of public procurement:

- There is no control or verification of the information published by each contracting entity, nor quantitative or qualitative uniformity of the information to be published in open data (OPEN DATA) by PLACSP and the autonomous platforms.
- Deficiencies have been detected in the publication of contractual modifications, subcontracting, assignments to in-house means and preliminary market consultations, but, above all, in small contracts.

The direct supervision actions of the OIReScon **confirm risk areas in public procurement**, some of them recurrent, already identified by both external and internal supervisory bodies, as well as the **absence of a strategic use of public procurement**:

- Inertia and lack of adaptation to the object of the contract of solvency and classification criteria, as well as award criteria, have been detected, which may affect competition in bidding and access to SMEs.
- Breaches have been identified in the establishment of special execution conditions of a social, environmental and innovation nature, passing up possible improvements to social and environmental policies.
- The lack of documentary reflection of the execution phase of the contract in the procurement platforms is confirmed, which makes it difficult to monitor it.

Despite the obligatory nature imposed by the LCSP in relation to the **electronic processing of contracts, electronic procurement is still a challenge**.

- In 2018 there has been significant growth in e-recruitment in profiles hosted on PLACSP, rising from 1.35% to 6.92%. This is considered an exponential growth given that the implementation of electronic procurement is far from becoming a reality.
- The diversity of autonomous platforms and PLACSP presents a complex and cumbersome scenario for interested bidders who face multiple and different requirements (formal and technical) depending on the geographical location of the tender in which they want to participate.

Within the framework of **Professionalisation** in public procurement, and specifically in **its training**, there is still a **lack of specific itineraries** in the centres consulted, and a lack of capacity to absorb the demand for training, affecting specialisation in the matter:

- 84.75% of the public procurement activities of the centres consulted focused on general training, with only 15.25% being specific or advanced training.
- More than half of the requests (an average of 57.36%) in public procurement training, both general and specific, have not been met in 2018, the year of entry into force of the LCSP.
- Only one of the centres consulted provides information on itineraries that include training in public procurement for new civil servants.

In terms of **preventing and fighting corruption, coordination is required at the national level** to ensure consistency and uniformity in procurement actions. Information has been requested from the agencies and offices for the prevention of and fight against corruption set up at both autonomous and local level (Anti-Fraud Office of Catalonia, Agency for the Prevention of and Fight against Fraud and Corruption of the Valencian Community, Office for the Prevention of and Fight against Corruption of the Autonomous Community of the Balearic Islands, Municipal Office against Fraud and Corruption of Madrid City Council and Office for Transparency and Good Governance of Barcelona City Council):

- Of the total number of complaints regarding public procurement reported by agencies and offices for the prevention of and fight against corruption, 65.75% are still pending, 13.70% have been resolved with a report or recommendation to the denounced institution and 9.58% have been filed.
- 1.36% of the complaints regarding procurement have been notified either to judicial bodies, the Public Prosecutor's Office or the Court of Auditors, and the final result is unknown.
- The need for a **National Strategy for Preventing and Combating Corruption** has been detected, which includes a specific section on public procurement, given its relevance in this area.

For the first time, the conclusions of the external and internal supervisory bodies in public procurement are collected and pooled in a single document, which is one of the major contributions of this report, highlighting the **role that the OIReScon, as the public procurement supervisory body**, is called upon to collect, systematise and integrate the actions of all the public procurement control bodies.

- A total of 3717 special appeals have been analysed in 2018, referred by the competent bodies for the resolution of special appeals on procurement matters (**contractual appeal administrative courts**). This volume of contractual appeals is 25% higher on average than the previous year, and in some cases this

percentage is higher than 50%, as is the case of the Administrative Tribunal of Contractual Appeals of the Government of Andalusia (Tribunal Administrativo de Recursos Contractuales de la Junta de Andalucía TARCJA).

- The areas of risk in procurement matters, identified by OIReScon from the resolutions of the Administrative Tribunal of Contractual Appeals coincide with those detected by the Office and, in part, with the conclusions drawn from the reports issued by the **external and internal supervisory bodies of the financial economic management** (the Public Accounts Department of the State Administration, the Autonomous Accounts Departments and the Local Accounts Departments) and the external control bodies of the Court of Auditors and External Control Bodies).

Joint treatment and analysis of the conclusions of the internal and external supervisory bodies, of the agencies and offices for the prevention of and fight against corruption, of the antitrust agencies and of the direct supervision actions of the OIReScon, will allow the Office to establish a series of **monitoring indicators** and, in turn, the drawing up of a **constantly updated public procurement risk map** that allows preventive and not only corrective measures to be taken in the area of public procurement, which must be integrated into the future **National Public Procurement Strategy**.

The diversity of **consultative bodies at state and regional level** (advisory boards or commissions) and the consequent possibility of plurality of criteria, makes it essential to establish a **coordination mechanism between them and the OIReScon** in order to adopt general recommendations or instructions for the sole interpretation of precepts that generate legal uncertainty.

MAIN RECOMMENDATIONS

- It would be necessary to **provide PLACSP with the necessary capacity to constitute itself as a single public procurement database** (including the contract execution phase) that would allow contracting entities to simplify the fulfilment of their obligations of publicising, transparency and rendering of contracts; to provide information and access to tenders to economic players; and, to allow the exploitation and processing of public procurement data (BIG DATA) to the OIReScon in its function of supervising the procurement of the entire Public Sector.

Additionally, mechanisms for verification and validation of published information must be articulated.

- A series of points and extremes must be addressed within the framework of the **procurement procedure**. Specifically:
 - At the time of scheduling the contracting entity's procurement (definition of the object and need, choice of procedure, division into lots, cost structure and estimated duration of the service, among others).

- In the drafting of the specifications that must govern the procurement (classification and solvency appropriate to the subject-matter of the contract, measures favouring SMEs, insufficient or inadequate budgeting, award criteria, in particular those relating to the quality of the service, and special performance conditions).
- In the processing of the bidding procedure, strengthen controls, change administrative culture, encourage and strengthen the means and corrective measures to be taken against conflicts of interest, collusive practices and prohibitions for procurement.
- In relation to the execution of the contract and the supervisory actions carried out: establish measures to control payment to subcontracted companies in the contracts that are required by law, as well as strengthening the justifications for contractual amendments, especially in works contracts.
- Indicators should be developed to evaluate the **procurement rationalisation and centralisation systems**, also providing information that complies with the principle of transparency and allows monitoring and evaluation of its efficiency. In addition, the necessary coordination measures should be adopted so that all platforms (PLASCP and autonomous) homogeneously collect the information on the rationalisation systems and instruments used, allowing for the aggregated processing and exploitation of data with the aim of reaching reliable and meaningful conclusions.
- Encourage, promote and reinforce the implementation and implementation of **electronic procurement**, in this sense, the constitution of the Section on “electronic public procurement” of the Cooperation Committee, regulated in art. 329.3.d) of the LCSP, in order to coordinate, standardise and disseminate the existing means, systems and computer applications, and thus facilitate their reuse and use in accordance with art. 157 of Act 40/2015, dated 1 October of the Legal Regime of the Public Sector. Likewise, the electronic processing of administrative bodies for the resolution of special appeals in procurement matters and of internal supervisory bodies for economic and financial management should be promoted and encouraged.
- Adapting and creating itineraries aimed at specialisation and **Professionalisation in public procurement** is recommended, as well adapting the training offer to the existing demand, with practical and not only theoretical content, so that it represents an authentic value in the performance of the job of the technical units.
- It is recommended to maintain and strengthen coordination mechanisms between the existing agencies and offices for **preventing and combating corruption** and the OIReScon, in order to adopt measures to progressively systematise the information relating to the files processed by them arising from

irregularities, fraud or corruption in the procurement area. In addition, the **OIReScon, as the office responsible for preventing and combating corruption in the procurement area** should be provided with the necessary infrastructure to arbitrate an investigation procedure that has the necessary guarantees of both confidentiality and the protection of the whistle-blower.

- It would be necessary to **arbitrate mechanisms for the coordination of criteria between the advisory bodies and the OIReScon** in order to establish a uniform interpretation of precepts that generate legal uncertainty of public procurement regulations, unifying their application in the public sector in the form of recommendations or general instructions.

The conclusions and recommendations of the annual supervision report will be incorporated and may serve as a basis for the configuration of the strategic lines, measures, manuals, guides and protocols that are articulated and incorporated **into the National Public Procurement Strategy**, applicable to the state, autonomous and local Public Sector and whose approval is the responsibility of the OIReScon.

Independent Office for Regulating and Supervising Procurement

Madrid, 17 December 2019.