

## THE AUDIT OF THE PROCUREMENT IN THE SPANISH COURT OF AUDIT

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The audit of the contracts held by the central government and other public sector entities is one of the areas that, specifically, covers the auditing work of the Court of Audit. This is required, in addition, by the specific legislation of our institution.

In this sense we develop four simultaneous lines of action:

- It is carried out, an annual or biennial global audit report, of all contracts held by State public sector entities subject to the laws regulating public sector contracts, where conclusions are reached concerning all public sector and the entire procurement held.
- On the other hand, Individual reports are made for the control of certain contracts or procurement held by a particular public entity, we draw conclusions from them concerning these specific contracts or those particular institutions. This individual audits are contained in the corresponding Annual Programme, separate contracts and entities are selected every financial year.
- In addition, it is overseen, on an annual basis, separately from the State Public Sector, the procurement held by the regional public sector and the local public sector.
- Finally, it is also done separately, the control of procurement held by the management bodies and common services of the Social Security, constituting separate reports.

It should be noted that public procurement law in Spain has passed through significant changes in recent years. The text currently in force is Law 30/2007, of 30 October, on Public Sector Contracts, which transposes into the Spanish legislation Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Law 30/2007, is aimed at regulating public sector procurement, to ensure that it complies with the principles of freedom of access to bids, publicity and transparency of procedures, and non-discrimination and equal treatment among candidates, and to ensure, in connection with the goal of fiscal stability and cost control, an efficient use of funds for the execution of works, procurement of goods and contracting of services by requiring the prior establishment of the needs to be met, safeguarding free competition and the selection of the most economically advantageous tender.

It is also the subject of this law the regulation of the legal regime applicable to the effects, compliance and administrative termination of contracts, in response to the institutional purposes of public nature that through them should be accomplished.

To properly develop the audit of public procurement, the Full Session of the Spanish Court of Audit adopted in 2005, and later, in 2009 a General Instruction, published in the Official State Gazette, where, following the provisions of Law 30/2007, on Public Sector Contracts, it specifies the information and documentation that must be submitted by the public sector entities, which facilitates, in turn, that these entities comply with their obligations.

In the Instruction, it is required of all public bodies, agencies and entities in the Public Sector, the submission, on an annual basis, of the certified list of all contracts and agreements made in that year. Besides the above, it states that in a continuous basis throughout the year, the public bodies, agencies and entities must send to the Court of Audit extracts with specifically detailed records of certain contracts, by type and economic size.

It is envisaged, therefore, a double submission of documentation: a widespread, annual one, to be carried out by the public entities, and another restricted and continuous, to be carried out by the entities that hold certain types of contracts and certain financial amounts.

In terms of contents, the audit of contracts involves the monitoring of their preparatory actions and especially their awarding, where it is analysed whether it has complied with the required advertising, competition and transparency. It also oversees the implementation, modification and termination of contracts. To conduct the audit of the files, it is used a software developed by the Court of Audit, through which the information provided by the entities is treated and from which, after the appropriate analysis, the relevant conclusions are obtained, and the appropriate

recommendations aimed at correcting deficiencies and improving contract management are made.

As to the specific objectives of the audit of procurement held by the State public sector entities subject to the laws of public sector contracts, the Technical Guidelines that govern this procedure, with respect to contracts awarded in 2008, set out the following conditions:

- Verification of compliance with the obligation to submit to the Court of Audit the documentation provided by the legal regulations and the General Instruction noted above.
- Analysis of the particular administrative clauses of the different types of contracts and technical requisites of the most significant contracts, verifying their compliance with the Law on Public Administration Contracts, the Law on Public Sector Contracts and other applicable laws, as well as for the purposes of the procurement.
- Examination and verification of compliance with the requirements legally established in the preparation, awarding and signing of contracts.
- Analysis of the implementation of contracts, noting the major incidences along with their causes and consequences.

The audit is conducted on a sample of the files received in the Court, seeking to be representative of the different contracts and different types of award procedures.

With regard to contracts awarded in 2006, 3,797 records, amounting to 7.841 million euro, were received in the Court of Audit. Out of this total, 1,846 files were audited, for an amount of 5,245 million euro, representing the audit of 49% of the number of files and 67% of the total amount.

With regard to contracts awarded in 2007, 3,635 records were received in the Court of Audit, amounting to 12,300 million euro. Out of this total, 1,605 files were audited, representing an amount of 9,126 million euro. This action supposed to have audited 43% of the number of files and 74% of the total amount.

With regard to the internal organizational aspects to conduct the audit of public procurement, it should be noted that, irrespective of the overall coordination for the implementation of the Global Report and the existence of a common criteria, in each of the departments in which the Audit Section of the Court of Audit is divided, there is a unit specialised in the audit of contracts that carries out the analysis of the documentation and files that are submitted. From the work carried out by the Contract Audit Unit and the Legal Sections of the Departments, the corresponding reports relating to each of the sector areas concerned or the Global Report referred to all public sector Entities subject to the laws of public sector contracts, are prepared.

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