

Analysis of audit risks specific to public procurements

Analyse des risques d'audit spécifiques aux marchés publics

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Abstract

Public procurement deserves special attention. Every error, fraud, mounting of corruption increases the debt and undermines democracy. Auditors must have a good knowledge of the pitfalls that are present in this area and how to protect themselves from them. The objective of this paper is to identify the various risks inherent in the public procurement procedure in Morocco. We were able to identify three major risks. This is, first of all, to identify the risks related to the internal control system, then, to identify the risks inherent in public procurement. Finally, identify the auditor's risks.

Keywords: Audit ; internal control system ; auditor's risks ; public procurement procedure ; risks inherent in public procurement.

Résumé

une attention particulière doit être portée aux marchés publics. Les erreurs, les fraudes, la corruption peuvent augmenter nuire à la démocratie. Les auditeurs doivent avoir une bonne connaissance des écueils présents dans ce domaine et savoir s'en protéger. L'objectif de cet article est d'identifier les différents risques inhérents à la procédure de passation des marchés publics au Maroc. Nous avons pu identifier trois risques majeurs. Il s'agit, tout d'abord, d'identifier les risques liés au système de contrôle interne, puis, d'identifier les risques inhérents à la commande publique et enfin, identifier les risques de l'auditeur.

Mots clés: Audit ; système de contrôle interne ; risques du commissaire aux comptes ; procédure de passation des marchés publics ; risques inhérents aux marchés publics

Introduction

The proper management of public contracts is essentially based on the proper management of public funds by public entities and the transparency of all phases of public contract execution. The audit seems to be the most effective tool to meet these expectations and find the balance of this dual requirement. The audit as an independent external control includes not only the questions of regularity but especially the four “E”s: Effectiveness; Economy, Efficiency and Excellence. The international standard of audit "ISA n° 250": taking into account the legislative and regulatory texts applies to the audit of the financial statements as it can apply to other information and related services, and therefore the auditor may be responsible for monitoring compliance with legislative texts, in this case the public procurement decree, and issuing a report thereafter.

In order to meet the audit requirements, it seems necessary for public establishments to put in place a solid and permanent control, so that the audit constitutes a particularly effective tool in the service of the public entity.

The public procurement procedure in Morocco therefore raises three major risks. This is, first of all, to identify the risks related to the internal control system, then, to identify the risks inherent in public procurement. Finally, identify the auditor's risks. The problem posed in our research is to know: what are the risks inherent in the preparation, award, execution and payment of public contracts? and subsequently describe the audit approach followed during the audit mission of a public contract

A Risk Based Approach is one of the direct consequences when looking for efficiency through internal or external auditing. The audit product of a risk-based approach is certainly a most diversified one, because the audit provides an operational view to the audited. He is in a better position to face arguments that are conflicting with his conclusions.

The risk analysis aims to identify, for each phase of the public procurement procedure, the internal or external factors that are beneficial to risk occurrence.

For the success of the audit, the personnel must be well trained, credible and experienced. It is also very important to dedicate sufficient time-budget for mission planning and preliminary analysis.

1. Risks related du the internal control system

Public procurement has been identified as the riskiest government activity (OECD, 2016, 5). according to the institute of Internal Auditors: The primary objectives of the internal control system are to ensure:

- The reliability and comprehensiveness of information ;
- The respect of policies, plans, procedures, laws and regulations;
- Heritage protection;
- Economical and efficient use of resources;
- The achievement of the objectives and goals that have been set for a particular activity or program

The internal control system is therefore comprised of the processes and mechanisms that should ensure the above-mentioned objectives.

The internal control of the purchasing function should be suitable to the specific risks of each public entity. There are however common traits that may be applied to the purchasing function in the public sector. The most significant risks are:

- Violation of the public procurements' regulations;
- Accumulation of tasks;
- Risks related to the quality of management;
- Risks related to the functioning of the tenders commission;
- Risks related to the operative mode of contract execution;
- Absence or ineffectiveness of the internal audit function.

1.1. Violation of the public procurements' regulations

The non compliance to the regulations may originate from shortcomings in the internal control mechanism. The risk factors and corresponding impacts may be:

- The absence or insufficiency of qualified personnel in public procurement regulations is a source for errors and omissions and may provide opportunities for corruptions;
- The absence of expertise and sufficient qualification, mainly for some specific contracts, may lead to the violation of technical standards and to the insufficiency of the protection systems which in turn can prove costly;

- The lack in the specification of objectives and roles, as well as the lack of task and responsibility level definition can provide a source of conflicts and confusion;
- The absence of procedures or lack in their formalization, as well as the lack of specification regarding the internal standards (administrative and technical) can lead to confusion and quality problems;
- The absence of a supervision system will enable collusions and frauds;
- The lack in coordination between departments, as often manifested through power relationships between the purchasing department and the using department, as well as poor internal work relationships may prove to be a handicap and must be mutually managed;
- The absence of an IT system, a partial reporting system or the incompatibility of software apps may make the monitoring and control quite impossible;
- The inaccuracy or absence of power of attorney can lead to legal risks regarding the contracts.

1.2. Risks related to the accumulation of tasks

The principle of function dissociation between the authorizing officer and the public accountant is a key point of control in public entities. Nonetheless, the intervention of the public accountant doesn't occur until the payment phase and is limited to an off-site control based on documents and records.

The risk of task accumulation being strongly present in the authorizing officer's departments, the following principles must be verified:

- The person that issue and/or instructs the purchase requisition (from the using department) should not be the same as the one that decides on the purchase;
- The rules of power delegation must be respected at each phase;
- The book keeping of matters and inventory is the responsibility of other departments;
- The physical acceptance is assured by or in the attendance of controllers whom are independent from the using and the purchasing department.

1.3. Risks related to the operations' disaggregation

The public procurements' legislation in Morocco allows public entities to purchase through procurement orders, supplies, works and/or services, provided that they don't exceed the limit of MAD 200,000.

This provision encourages disaggregation of purchase requisition in order to avoid call to tenders' procedures.

1.4. Risks related to the quality of management

It is widely known that in the field of investment and procurement, public institutions often do not possess the whole set of quality procedures and management required to cover the risks related to the function.

The burden of ancient practices weighs heavily upon the behavior of some representatives in respect to public procurements.

The absence of orientations and of defined policies in respect to procurements will lead to deviations between purchasing practices and the execution of the institution's missions.

1.5. Risks related to the functioning of the call to tenders' commission

The functioning of the call to tenders' commission, instructed to examine the submitted tenders, is very important in maintaining the quality of internal control as it is the final lock before the contract signature, and because it is, in addition to the function of the public accountant, the only mandatory element of internal control.

The aforementioned commission intervenes at two phases: opening and registration of the tenders and choosing the contractor. In its first role, the procedure must ensure the registration of the actual tenders that have been received. As of its second role, the commission must not be limited to endorsing choices but make sure of the procedures' regularity and ask questions related to the opportunity and the purchasing policy.

The commission's efficiency is subject to caution, simultaneously because of its composition and its work conditions. Comprised of a majority of administrating officers, they often don't include members with high enough skills in terms of public procurement's regularity. The practitioners of public procurement often claim that the members of the call to tenders commission do not master all the aspects regarding their responsibilities (legal, technical and financial aspects).

Furthermore, their meetings are infrequent and their agendas are crammed (several call to tenders in the same day), whereas tenders analysis documents are given to them on the spot. Taking into account the complexity of some contracts, it is not certain that members of the commissions are able to give an enlightened opinion.

The most common risks for the commission's members are as follow:

- Infringement to the neutrality of the commission's members (collusion with suppliers, gifts, non direct fees...);
- Lack of qualification necessary to technical tenders' evaluation;
- Inability to concord upon the follow-up on the examination of the administrative and technical files;
- Absence of an appointment decision regarding the members of the call to tenders' commission.

1.6. Risks related to the operative mode of contract execution

In terms of internal control, contract execution should not be left for the sole responsibility of the using officers of the contract's delivery subject, in order to prevent collusion with suppliers. The following points are primordially risk aspected:

- The acceptance mechanism of products, deliveries and works;
- Eventual amendments, which are subjects upon which the control must be strengthened in order to avoid reassessment and alteration of the initial contract provisions.

1.7. Internal Audit

The implementation of an internal audit department is a major element of internal control. Aside from some public institutions, ministerial departments (public works), the establishment of internal audit cells is constantly delayed.

2. Public Procurements' inherent risks

The second type of risk is public Procurements' inherent risks? The risks may affect the following:

- Forecasting the public procurements;
- Requirements' definition;
- Procurement decision making;

- Procurement procedures;
- Award criteria;
- Value of contracts;
- Object of contracts;
- Construction contracts.

2.1. Forecasting the public procurements

Public procurement procedures in Morocco include the obligation for authorizing officers to publish at the beginning of each budget year, the forward program of the procurements that he envisions to make during said year. The risk of issuing the forward program as a mere procedural formality is not excluded.

The risk is manifested by:

- The inconsistency between the strategic missions of the institution and the programmed procurements;
- The preparation of the documentation used in programming and budgeting are of insufficient quality and with delay.

The risk factors may be:

- Failure of the scheduling procedures in respect to the purchasing function;
- Insufficient coordination between strategies and procurement policies;
- Absence of different procedures of managing procurement of both equipment and furniture;
- Lack of coordination between users and purchasers;
- Highly restrictive expression of the operational needs.

2.2. Risks related to the requirements' definition

The public procurement legislation prescribes that the deliveries subject to public procurement contracts must exclusively give answer to the nature and scope of the needs to be met.

The risks are to identify in an incomplete, inaccurate or delayed manner the programmed needs. The roots of these risks stem from:

- Incomplete or obsolete aspect of forecast tools, which is mainly the result of a non-updated budgetary nomenclature, whereas the markets of products and services are constantly developing;
- Inaccuracy or maladjustment of the information used for the assessment of the needs. These deficiencies can be linked to problems of form when designing the needs' assessment documents (in quality and volume), to flaws in upstream forecasts (mainly activity forecasts) and to delays in collecting or transferring information needed to initiate the purchase requisition.

2.3. Risks related to the procurement decision making

Each decision to proceed into a purchase is made after a procedure that permits to verify the appropriateness of the purchase requisition, assuming that the expressed need is a genuine one.

The risk related to this is responding in a non optimal manner to an actual need or deciding to meet a need that is not genuine. It can happen if:

- The purchase requisition is emitted by a non authorized person or issued while exceeding the allocated budget;
- A decision to purchase is made while the required procurement exists in sufficient quantity;
- The procurement decision is made by a non-authorized person.

2.4. Risks related to the procurement procedures

The obligation to undergo an open call to tenders can be avoided by cheating through some of the other authorized procedures, which can manifest through:

- Non compliance to the prescribed limit for a restrained call to tenders' procedures;
- Awarding a framework-contract for deliveries other than the authorized ones;
- Awarding a contract through negotiation while not complying with the derogations prescribed by the regulations;
- Abusing the use of the emergency concept in order to go through a negotiation procedure.

2.5. Risks related to the award criteria

In order to favor a contender over the other, the public institution can be tempted to adapt its award criteria depending on the qualification of the favored contender. Chance for this situation to happen are when:

- The definition of the financial and technical qualifications is ambiguous. The power of appreciation is given without constraint to the public institution;
- Abusing the use of weighting criteria for financial and technical proposals which is helped by the opening sequence of the aforementioned proposals.

2.6. Risks related to the contracts' value

For some contracts which are relatively significant in terms of value, the financial capacity of the contractor may not be sufficient to actually go through the contract in accordance with its provisions in terms of deadlines and quality required. The risk can strongly manifest through arrangements made between the contractor and operational officers such as:

- Prolonging the deadlines of contract execution through Stop Work and Resumption Work Orders;
- Abusing the use of amendments to the main contract in such a way as to increase the quantities of sold goods or works performed at an excessively high price;
- The violation, with the coordination of the project holder, of the project's technical characteristics (materials of lesser quality than prescribed, works carried out falling short of the required standards ,...);
- Renunciation from the authorizing officer's departments regarding the obligation to constitute the final security bond by the contractor.

2.7. Risks related to the contracts' object

Some contracts touching upon highly qualified deliveries demand a high level of expertise. If the project holder does not possess such expertise, he is exposed to being subject of the applicant company's imposition in respect to the financial and technical requirements.

Said risk manifests through:

- The contract documents being drafted in a summary manner and lacking provisions that are appropriate to the contracts features;

- A financial assessment by the administration which is further away from the real value of the contracts object;
- Difficulties in supervising and controlling the contract's execution which may sometimes manifest through systematic and unqualified acceptance of the contractor's deliveries.

2.8. Specific risks regarding construction contracts

The execution of construction contracts is a complex operation that requires, besides the project holder and the contractor, the involvement of other operatives: Architect, engineering consultant, quantity surveyor/controller ...etc.

The multiplication of responsibilities as well as the entanglement of relationships between operating officers makes the delineation of responsibilities difficult and can only lead to unwholesome practices. These practices are corroborated by:

- The incomplete definition of the project's features and the conditions of its execution;
- The absence of technical services in the project holder's departments whose missions are the monitoring and control of the implementation of the project;
- The absence of formal control measures from the engineering and architectural consultants whose mission is the supervision of the construction site (competence, independence ...etc.)

3. Auditor's risks

The third type of risk is risk-based auditing approach. this approach may reveal itself to be inappropriate, if the auditor lets himself slide into an insufficient risk analysis and appreciation. The auditor may not sufficiently analyze the system's or the operation's inherent risks, or omits in his audit planning a key aspect of the audited procedure.

The protection against audit risks holds, in substance, to the organization, supervision and monitoring of the auditor's works. Whereas in form, it holds to the existence of sufficient documentation that allows to ensure the auditor against his own errors, and to demonstrate that his mission has been performed with the same thoroughness as expected from the audited entity.

There exist two sets of risks regarding the auditor which are intimately related.

3.1. Risks related to the quality of controls

The absence of a work approach can lead to erroneous conclusions. In regard to the time budget and the multitude of documents related to each phase of the contract, the auditor may risk to concentrate his works on a specific phase of the contract which presents lesser risks, at the expense of areas concealing significant discrepancies.

The auditor must not fall into the excess of formalities' trap, where the major part of the budget time is spent on producing virtual or real "papers", at the expense of field work.

3.2. Risks related to the auditing team's qualification

The risk factor is corroborated by the absence of norms specific to public procurements' auditing that would dictate a certain set of rules regarding appropriate competences and background as well as mastery of the regulations.

Conclusion

Ethics is based on accountability and therefore on an obligation to act. It presupposes the establishment of good practice guides to prevent breaches of probity and to protect the reputation of the administration.

Work standards require initial orientation of the mission: starting from the information gathering of the entity and contract subject to the audit, it is possible to develop a suitable strategy that may permit to identify significant fields and systems of risk coverage.

Indeed, the preliminary phase of information gathering allows the auditor to better define the significant fields and systems of risk identification.

Said risks can be grouped into the following categories:

- Risks of non-control: The risk that the entities' control system doesn't ensure the prevention or correction of discrepancies. It is evident that there is a direct link between the mediocrity of the internal control's quality and the occurrence of frauds.
- Public procurements' inherent risks: The risk that a significant error may occur due to the distinct feature of public procurements' legislation, to the project owner, his activities, sector, environment and to the nature of his operations.
- Auditor's risks: The risk that the procedures implemented by the auditor do not allow him to uncover significant errors and anomalies.

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