

# The activity of market analysis for planning of government procurement



## **Luiz Cláudio de Azevedo Chaves**

Specialist in Administrative Law, professor at the National School of Urban Services (Ensur), Invited professor at Fundação Getúlio Vargas (FGV) and the Pontifícia Universidade Católica do Rio de Janeiro (PUC-Rio). Author of works Practical Course of Bidding: the secrets of Act N. 8.666/93, Lumen Juris and Public Procurement: governmental buying and selling for lay people (Curso Prático de Licitações: os segredos da Lei nº 8.666/93, Lumen Juris e Licitação Pública: compra e venda governamental para leigos), published by the Alta Books. Regularly lectures at national level the course "Market Analysis for the planning of public procurement: price survey in procurements, waiver and impossibility for competitive bidding".

## **ABSTRACT**

Since Act n. 8,666/1993 became effective, there have been discussions about the stage of the procurement process that concerns price survey. By reason of complete lack of regulation, for many years, determining the methodology to be followed for the performance of this important stage of the internal phase of the procurement process has been left at the discretion of public agents (managers, purchasing agents, and even legal assistants). It is important to acknowledge that this activity has a major strategic relevance in the procurement process and the budget administration of the agency, since a poor price survey will give space to entering into overpriced contracts; price surveys that do not find the actual market price may render the execution of contracts impracticable, and consequently restrict the mechanism. It must be acknowledged that this is an extremely complex activity that requires skill on the part of the public agents. Even now, under the provisions of Normative Instruction n. 5/2014, the agent performing the regulation still lacks guidelines as to the methods that can be adopted in order to reach an appropriate financial planning of the contract. It is precisely this aspect that will be addressed herein, so as to offer the public agents in charge of such activity the minimum data to perform their duties well.



**Keywords:** procurement, internal phase, price survey.

## 1. INTRODUCTION

In exception of engineering works and services contracts, which answer by their own techniques, pricing for the purpose of planning contracts has been addressed, in most of the public agencies and entities, under a simplistic and unreal formula: the survey should be carried out with at least three quotations, thereby understood as proposals forwarded by any parties that may be interested. Having said that, it is easy to realize the degree to which such method is fallible (which until nowadays continues in many regions of this vast country).

In the first place, the company of the related sector, once consulted, is not obliged to provide a 'quotation'. And, not rarely, resists in doing so, whether since this work will require its precious time just to provide a preliminary pricing, or whether since the businessperson has no intention of anticipating his/her price to the administration or to his/her competitors. Secondly, because those who respond to the request are aware that the aim is to contribute towards a future procurement procedure, and therefore have no interest in providing any information which can be relied upon. Thus, the information as a rule is fictitious: prices with a broad margin of fat to be burned at the time of the competition as such.

Given the complexity and importance of such activity, we prefer not to address it with the simplicity of the expression 'price quotation or survey', since this suggests an elementary activity. That which agents have developed (or should develop) is an actual 'market analysis'; that is, a real investigation of the market conditions regarding the object that is to be placed for competition.

The expression 'quotation' is also improper, since it should be understood as information provided by the entrepreneur of the sector related to the object. Therefore, the expression would not include information obtained from other sources of consultation. In this regard, we also prefer the expression 'parameters or pricing data'. Of course, since each piece of information obtained from a variety of sources represents data that must be duly treated as to compose the market price spreadsheet. That which the public agent in charge of this activity carries out is therefore a 'market analysis' that allows for collecting 'pricing parameters or data'.

With the advent of Normative Instruction (IN) n.5 MPOG/SLTI, of June 27, 2014, new parameters were finally fixed to mark the investigation of the market, aiming at planning public bidding. Its Article 2 lists sources of consultation that can serve as a basis to collect information, to wit: recent contracts of the agency that is promoting the bidding; biddings and contracts of other public agencies; official charts

or specialized publications; and the internet. TCU Ordinance n. 128, of May 24, 2014, further states that pricing information can be obtained by consultation carried out over the counter or phone.

However, in that which concerns advances in relation to the matter, neither of these regulations addresses in detail how each of these sources should be treated. In a recently concluded bidding, should I use only the lowest price, the average of all the prices classified, or each of the prices classified as an isolated piece of information? Should prices obtained in consultation on the web include freight? And where freight is announced free of charge, can it be used? This will be addressed below.

## 2. FROM SEVERAL SOURCES OF SURVEY

### 2.1 RECENTLY ENDED BIDDING

As mentioned above, among other information to be used as sources for pricing, results of recent biddings of the agency itself and of other agencies and public entities can be used, as per IN 5/2014-MPOG/SLTI:

Article 2 Pricing survey will be carried out by using one of the following parameters: (Wording given by Normative Instruction n.7, of August 29, 2014).

[...]

III – similar contracts of other public entities, which are underway or have been concluded within one hundred and eighty (180) days previous to the date of the price survey;

And TCU Ordinance n. 128/2014:

Article 9 The estimation of price of materials, equipment, inputs, and services hired for supply of goods or utilities must be calculated based on the simple arithmetic mean of at least three (3) price references obtained, separately or jointly, by means of market price survey, at the Public Administration's agencies or entities.

Paragraph 1 In the calculation of the simple arithmetic mean referred to in the main para-

graph should be excluded extreme and unreasonable amounts which may significantly alter the core trend of the result of the example.

[...]

Paragraph 4 For the purpose of this Ordinance, the prices practiced in the Public Administration's agencies or entities are evidenced, among other forms, by means of results of recent bidding procedures, of acquisitions and contracts recently undertaken, of prices recorded in effective price records minutes, or of prices practiced in contracts that are underway.

As can be noticed, despite both the normative texts referring to the results of biddings (in the case of IN 5/2014-MPOG/SLTI, indirectly) there is no indication whatsoever of the methodology that should be applied for the use of the latter, which is, in my view, one of the richest consultation sources. Should solely the winner price, the average of all the classified prices, or each of the prices classified as autonomous data be used?

However, before looking further into the merits of the methodology to be used in the appraisal of the price estimated with the 'biddings' source, the following is worth mentioning: whichever the data that has been collected, notwithstanding the source that was consulted (biddings, suppliers, Min-





utes of Price Records System [SRP], contracts of other agencies, internet), it is of primary importance that a critical analysis should be performed, in such manner as to avoid that prices which are discrepant, unpracticable, or overpriced in relation to the object to be hired, should be included in the calculation memory, attracting an unreal result in relation to the market average. The following refers to the TCU guidelines:

The price survey which precedes the drafting of the bidding budget requires a critical appraisal of the amounts found, in order to dismiss those showing a significant variation in relation to the others, which for this reason compromises the price estimation in reference. According to the plaintiff, the price estimation comprised in the basic project of the bidding proved to be inconsistent, since the surveyed amounts showed high variations of price, 'sufficient to affirm that the average of these prices is not adequate to represent the prices practiced in the market'. The Court, upon accepting the offer of the reporting judge, decided to inflict on the responsible parties the penalty fine of Article 58 of Act n. 8,443/1992. Precedent that was mentioned: **Court Decision 1,108/2007 – Plenary Appellate Decision 403/2013 – First Chamber 013.319/2011-6, rapporteur minister Walton Alencar Rodrigues, 02.05.2013.**

Having said that, we will proceed to address the methodology to be adopted in the examination of the results found based on previous biddings, for market outlining in the purchase process.

The first recommendation is to preferably use results of biddings of other agencies located in the same region of the entity that is carrying out the survey. In fact, the cost of transport, especially in Brazil, has a strong influence on the final price. One must also pay attention to the institutional aim of the surveyed agency. As far as possible, it should resemble the aim of the entity that carries out the survey, namely if the object of the purchase is specific for its performance area. If a public sanitation company intends to acquire chemical products to use at water treatment plants, other companies of the same sector will probably adopt the same routine and approximate quantities. In another situation, it would not be reasonable that an agency, e.g. a court that intends to acquire medicines for its health department stock, should compare prices against a purchase made by a municipal health department, or that of a major hospital, for the reason of the purchase profile of these two agencies being quite distinctive.

The analyst must also take care as to verify whether the object of the paradigm bidding resembles the one its organization will hire in technical characteristics and quantities.

For the purpose of market analysis, objects may be considered similar ones when difference in terms of technical characteristics will not cause a significant impact on their final price. For example, if an agency intends to acquire a notebook, the processor's difference in performance causes a decisive impact on the price, which does not occur with the hard disk capacity. With regard to the quantities, compatibility relates to a difference between the item to be acquired and the surveyed one which would not impact the price, in view of economies of scale. The unit price of a ballpoint pen is not significantly altered (or altered at all) by an acquisition from one hundred to one thousand units; though if the object is an air conditioner, type Split 21.000BTUs, the unit price would definitely suffer a strong impact.

Once the compatibility of the object of the paradigm bidding has been verified, it is the moment to collect the obtained data.

None of the norms referenced herein address this detail. Therefore, considering the duty to criticize

the collected data (see aforesaid TCU precedent), common sense should prevail. It is noteworthy that the analyst will not be bound to collect data on the winner's final price only. In fact, as demonstrated below, it is even possible that the winner's price may not be used. Take as a hypothetical example a bidding carried out in the modality of an electronic bidding, whose final result classified ten offers.

**Figure 1:**

Data collected based on the result of a bidding

Classification		Final Offer
1 <sup>a</sup>	Company A	R\$ 1.000,00
2 <sup>a</sup>	Company B	R\$ 1.050,00
3 <sup>a</sup>	Company C	R\$ 1.080,00
4 <sup>a</sup>	Company D	R\$ 1.084,00
5 <sup>a</sup>	Company E	R\$ 1.085,00
6 <sup>a</sup>	Company F	R\$ 1.110,00
7 <sup>a</sup>	Company G	R\$ 1.200,00
8 <sup>a</sup>	Company H	R\$ 1.250,00
9 <sup>a</sup>	Company I	R\$ 1.300,00
10 <sup>a</sup>	Company J	R\$ 1.350,00

From the result it can be noted that the final prices between the winner and the sixth in rank are quite close, which indicates the competition was a tough one. From the seventh in rank onwards, the final prices become further apart. In this case, it would not be unreasonable to use the first six prices, each as isolated data. The others, having become distant

from the first in rank, can indicate that they did not compete at the bidding and that their prices still contain the "excess fat" of the initial prices. The best instrument to perform this appraisal in the electronic biddings is the Minutes, since it shows the historic records of the evolution of the bids throughout the competitive stage, indicating which prices remain static and those that effectively competed for the object.

Let us assume that, besides these, the analyst would have received two proposals from suppliers. The final result of the survey would be:

**Figure 2:**

Data collected based on the result of a bid and quotations from suppliers

Source		Data Collected
1 <sup>a</sup>	Electronic Bidding n. __- Company A	R\$ 1.000,00
2 <sup>a</sup>	Electronic Bidding n. __- Company B	R\$ 1.050,00
3 <sup>a</sup>	Electronic Bidding n. __- Company C	R\$ 1.080,00
4 <sup>a</sup>	Electronic Bidding n. __- Company D	R\$ 1.084,00
5 <sup>a</sup>	Electronic Bidding n. __- Company E	R\$ 1.085,00
6 <sup>a</sup>	Electronic Bidding n. __- Company F	R\$ 1.110,00
7 <sup>a</sup>	Supplier 1	R\$ 1.100,00
8 <sup>a</sup>	Supplier 2	R\$ 1.150,00
<b>Market average</b>		<b>R\$ 1.082,37</b>
<b>Explanatory note</b>		The final prices, from the 7th to the 10th ranked in the electronic Bidding n. ____, were not considered, as they were considered discrepant in relation to the whole.





Apart from this method, only the winning price as isolated data, the average from the second to the sixth in rank, and the suppliers' quotations could be used:

**Figure 3:**

Map of alternative prices

	Source	Data Collected
1 <sup>a</sup>	Electronic Bidding n. ____ - Winner Price A	R\$ 1.000,00
2 <sup>a</sup>	Electronic Bidding n. ____ - Average of 2nd to 6th	R\$ 1.081,80
3 <sup>a</sup>	Supplier 1	R\$ 1.100,00
4 <sup>a</sup>	Supplier 2	R\$ 1.150,00
<b>Market average</b>		<b>R\$ 1.082,95</b>
<b>Explanatory note</b>		The final prices, from the 7th to the 10th ranked in the electronic bidding n. ____, were not considered, as they were considered discrepant in relation to the whole.

However, if the result of the paradigm bidding has selected a winner price at a level well below the others, this may indicate that the winner would have quoted an impracticable price. In this specific case, it would be extremely recommendable not to use the winner price since this refers to data that is far too distant from the data as a whole found in the bidding, and to make use only of the other prices.

## 2.2 PRICES RECORDED IN THE MINUTES

The use of the price records minutes of other agencies and entities as a source of pricing data collection is regulated under Normative Instruction (IN) 5/2014-MPOG/SLTI:

Article 2 The survey of prices will be carried out through one of the following parameters: (Wording amended by Normative Instruction n. 7, 29 August 2014)

[...]

II – Similar procurements of other public entities that are either underway, or completed within one hundred and eighty (180) days prior to the date of the survey of prices; **(amended by Normative Instruction n. 3, April 20, 2017)**

And, in TCU Ordinance n. 128/2014:

Article 9, Paragraph 4 For the purposes of this ordinance, the prices practiced in agencies or entities of the Public Administration are evidenced, among other, through the results of recent bidding procedures, acquisitions and recently assumed contracts, **of prices recorded in effective price records minutes**, or of prices practised in contracts that are underway. (emphasis added)

It can be noted that Normative Instruction (IN) n. 5/2014 does not explicitly indicate the use of the price records minutes as a useful source, which the Ordinance n. 128/2014 of the TCU indicates in the transcribed provision. This does not mean that IN n. 5/2014 does not recognize this source as reputable, since it uses the general term 'similar procurements of other public entities [...]'. Since no reservation exists, the construction will necessarily be comprehensive, to understand that the provision comprises all forms of contracts in the Public Administration.

The use of the price recorded in the minutes deserves, however, special care, in addition to those already explained in the case of use of bids' results. The reason is that the use of the recorded prices system has recorded a series of distortions, attracting considerable attention, including on the part of the Federal Court of Accounts. The distortions relate primarily to the degree of uncertainty that this procurement system is causing in the market of government procurement.

Many bids are undertaken without prior planning that show that this is the most appropriate way to fully satisfy the interests of the Administration, and are projected with a quantitative criterion devoid of minimum accuracy level. Many agencies and entities invite tenders aiming at recording prices on assumptions that have not been set forth in the respective legislation, setting quantitative limits to be

recorded without much commitment towards the genuine demand of the contracting agency. In addition, unfortunately, invitations to bid that stipulate minimum supply lots and a delivery schedule are rare. In this manner, the business becomes uncertain for the entrepreneur, and the generally accepted commercial rule is that *the greater the uncertainty of the business, the higher its cost*.

Imagine the case of an invitation to bid that aims at recording prices for future purchases of a particular product in minimum quantities of a thousand and maximum of 5 thousand units, without fixing minimum supply lots and a delivery schedule. If the entrepreneur formulates the proposal, counting on a sale which is approximate to the quantitative registered limit, but the managing agency remains closer to the minimum quantity, the unit price will become unprofitable. Knowing this, the entrepreneur adds to the price an increase which provides him/her with greater security, reducing the risk of loss in the commercial relationship, since it will not be possible, during the effective term of the minutes, to readjust its prices.

This condition has turned the Recorded Prices System into a more costly form of procurement. For no other reason, the TCU has insisted that agencies and entities should adopt measures which would make it possible to identify acts of planning this type of procurement:



Record the prices obtained by means of the electronic bidding [...] only if evidenced that this is the most economical option for Administration. (**Appellate Decision N. 984/2009, Plenary**)

I therefore believe that it should also be determined, as condition for the continuity of electronic bidding, that the agency or entity should attach to the administrative proceeding thereof the actual motive for such tender to be performed by the Recorded Prices System, concurrently remitting a copy of such document to this Court. Further, the unit must be determined where in future bidding procedures the adoption of the Price Records is always preceded by the explanation of the reasons for its employment. (**Court Decision N. 2,401/2006, Plenary**)

Therefore, the provision in Item IV of Article 2 of Decree 3,931/2001, which provides for the possibility of adopting the recorded prices system where it is not possible to previously define the quantities to be demanded by the Administration, cannot be understood as an authorization for the Administration not to define, albeit as an estimate, the quantities which may be purchased during the effective term of the price records minute. It is unreasonable to believe that by such provision the Decree has aimed to authorize the Administration to not select the best offer for the acquisition of goods and/or services, and to breach the constitutional principles. (**Court Decision No 1,100/2007 Plenary**)

In view of these observations, it is recommendable that the agent, who is in charge of collecting market prices, when faced with an effective price records minutes, whose object has characteristics similar to the one that is intended to be hired, should take care to check with the manager if the minutes have engendered business, especially in the case of minutes which term is about to expire. It is possible, and not rare that the minutes remain effective, appearing as valid in the system, while in practice not being used by the manager, participant, nor even generating external adhesions.



If the minutes, albeit in force, are not generating business, the recommendation is to not use them, since the recorded price can probably no longer be borne by the beneficiary, indicating that this price is outside the market rate.

SOURCE: Prices obtained on the Web

Regarding the use of the web, the regulations currently in force, IN 5/2014-MPOG/SLTI and TCU Ordinance 128/2014, provide, respectively, as follows:

Article 2 The survey of prices will be carried out by using one of the following parameters: (Wording amended by Normative Instruction n. 7, 29 August 2014)

[...]

III – survey published in specialized media, specialized electronic sites or of extensive domain, provided that it contains the date and time of access; or (as amended by Normative Instruction n. 3, April 20, 2017)

[...]



Article 4 Price estimates obtained in auction or sales intermediation websites shall not be admitted.

Article 10 The surveys of prices on the market can be carried out on the web, over the phone, via e-mail or correspondence, in specialized publications, and personally to the suppliers by means of a representative of the Administration of the TCU, in compliance with the following guidelines:

I – in the case of price survey carried out in online shops, a copy of the searched page where the price, the description of the goods, and the date of the survey is stated should be coupled with the records;

As seen, the only methodological recommendation regarding the use of the web is the one provided under Article 4 of IN/MP N. 5, June 27, 2014. In the case of TCU Ordinance n. 128/2014, the recommendation falls upon the formal aspect of the record of the survey that was carried out. As for the methodology to be employed, no provision exists. However, it is obvious that the use of the web as a source of price consultation requires many other cares. Starting with the orientation provided under IN n.5/2014/MP mentioned herein, we shall proceed to the guidelines for use of this excellent source of consultation.

The above-transcribed rule seems to indicate that which is obvious. It provides that data search on the web may not be made on auction or sales intermediation sites. This could not be more reasonable.

Thus, should the search aim to investigate the actual ‘behaviour’ of the market, it is clear that the sources of consultation must be suitable. Suitable must not be mistaken for dishonest. By suitable, it must be understood as the source that represents the usual commercial sales segment. The auction websites, and those of exchange or sales intermediation – for example, OLX, Mercado Livre – are honest sources, but not suitable for the purpose of collecting data. The reason for this is that private individuals work with exchange and sale of used products (although they may also have formal stores in their advertising registrations).

For performing the consultation, prices announced on widely known e-commerce websites must be searched, such as, among others, *Shoptime.com* and *Americanas.com*. Websites of formal shops that advertise their products in the worldwide computer network are also suitable.

There is no obstacle in the use of search sites, such as *Buscapé* or *Bondfaro*, because such tools work as a large filter of sales information about a particular product, performing a search on all sale sites. Of course, the use of this tool will accelerate the process, but, on finding the results, the person responsible for the search should go to the seller’s

site to print its page, because that is where the advertisement is to be found, which is ultimately the proposal.

As in the use of biddings, price records minutes and contracts with other public agencies, the comparison must be made based on the similarity of characteristics and quantities of the object to be acquired, which must be the most approximate as possible, thus considered the announced object which technical characteristics do not diverge to such an extent as to cause significant price differences.

In relation to the quantities however, the prices on the Web tend not be appropriate when the acquisition by the public agency will have a considerable volume. This is so since the price on the web is not calculated based on economies of scale, i.e., it does not promote the reduction of the unit value in view of the quantity to be acquired. Therefore, the web is more recommendable for purchases of small quantitative volumes. The agent who is in charge is responsible for determining in each case that which is to be considered as 'compatible quantity'.

Another concern that the analyst should have is with respect to price formation. In the open field of the web there is space for a number of offers and subsidised prices, either by the manufacturer, or by the website as such. For this reason, discount prices must be found, precisely because they do not represent the 'normal behaviour' of the market, but an

exact and specific situation. Ads such as: "From... By" Should be avoided.

Further care to be taken concerns the inclusion of the cost of freight in the advertised price of the product. It is known that the cost of transport or distribution of goods significantly impacts the final price of the product. Therefore, the analyst cannot be conformed with the advertised price, should the latter still have to suffer the impact of freight. The procedures must be performed on the site as if the purchase were being performed until the freight is calculated to obtain the final price.

### 2.3 COST SPREADSHEETS OF OTHER CONTRACTS

As it is widely known, the costs of service agreements must be estimated by means of a spreadsheet of composition of costs, as provided under Act n. 8,666, of June 21, 1993:

Article 7 Tenders for the performance of works and for services shall abide by the provisions of this Article and, in particular, the following sequence:

Paragraph 2 The works and services may only be tendered where:

(...)



II – there is a detailed budget in spreadsheets that express the composition of all its unit costs.

And in IN 2-SLTI/Mpog, April 30, 2008:

Article 14 Procurements of service rendering will always be preceded by the presentation of the Basic Project or Term of Reference, which should preferably be prepared by a technician with professional qualification relevant to the specifics of the service to be hired, and the Project or the Term must be justified and approved by the competent authority.

Article 15 of the Basic Project or Term of Reference should contain:

[...]

XII – the estimated cost of the procurement, the global and monthly maximum value established as a result of the identification of the elements that compose the price of services, defined as follows:

a) by means of filling in the spreadsheet of costs and price formation, in accordance with the cost of the items referent to the service, and may be dismissed with motive in procurements where the nature of the object renders impracticable or unnecessary the details of costs for evaluating the possibility of performing the practiced prices.

b) by means of a justified survey of the prices practiced in the market in similar procurements; or, also, by means of adopting regular amounts of sector indicators, tables of manufacturers, official reference amounts, public fees and others equivalent to these, as the case may be.

The costs spreadsheet identifies, basically, two major groups of expenses: direct costs and overheads. Direct costs refer to any expenditure that must be borne by the company, and which derives directly from the contract. In other words, it is the set of expenses that the company shall only bear if included in the performance of the contract.

In a contract for cleaning, hygiene and conservation, the material employed is a direct cost, since it is only borne by the company if the latter assumes the contract. Once the term of the contract has ended (or upon not having won the bidding) the amounts related to this cost will no longer be disbursed. The following costs are included in the list of direct costs: those related to labour employed in a dedicated form, expenses incurred thereon; materials, inputs, uniforms, individual protection equipment (EPIs); equipment (in this case, the depreciation cost); tax charged on the service and/or materials employed, among other.

Indirect costs are those which refer to expenditures arising out of the company's operational structure itself, and which are borne regardless of the execution of a contract, receiving, however, the impact thereof. These constitute expenses on rent of the company's head office and branches, as well as its physical structure (furniture, equipment); owned or rented vehicles; costs of water, electricity, internet, telephone; administrative labour, members' pro-labore, taxes on sales etc. On spreadsheets of costs, indirect costs are identified under Bonus and Overhead ('BDI').

It is important to highlight that, besides the purpose of financial planning of the project – to check the likely cost of the contract that will be placed for tender – the decomposition of the final price in cost spreadsheets also fulfils the objective of allowing the administration to be able to control the cost of the contract, enabling the identification of signs of impracticability in the offers, and avoiding the overprice of unit costs, or the practice of the so-called 'spreadsheet game'. A simple example will illustrate the concept well.

Imagine that a company belonging to the cleaning, hygiene and conservation sector submits an offer where the unit cost of one item of the uniform is priced at 60 reais. It will be possible for the contracting authority to check with the market (professional uniform segment) whether that price is in accordance with the actual current practice. If the result of this investigation reveals that the average price of that item does not exceed the range of thirty reais, it would be possible to negotiate the contract price, reducing the value of the unit item.

However, this control is only possible in relation to the direct costs of the contract, because for controlling the overhead costs it would be necessary



that the manager should collect a range of information on which he had no power to interfere, such as: value of all the company's contracts that are underway, with identification of the respective rates of BDI, and value of each operating expense that the company owns (leasing of real estate, insurance, salaries of administrative employees).

It is therefore by direct costs that the contracting administration can promote the financial control of the contract. It is lawful to conclude that the cost spreadsheet will be used concurrently for the planning of the procurement and contract management. After all, at the time of the renewal or extension of the contract, it will be perfectly possible to verify the actual rise of direct costs.

It happens however that most public agencies and entities, when carrying out a price survey activity for service agreements, especially those outsourced, adopt the wrong method to appraise the estimated value of the procurement, focusing their survey based solely on the forwarding, to companies of the relevant sector, of the spreadsheet of costs in blank, so that they be returned duly filled in.

This is clearly not the most appropriate way to appraise the estimated value of the procurement.

If the administration allows the companies themselves to define their direct cost, they enable the latter to intentionally raise such costs, fixing

profit on what should be direct cost, as demonstrated in the previous example.

Therefore, the administration itself should, by means of its technical experts, investigate the market in relation to each unit (direct) cost surveying the average price of labour that will be used, materials, inputs, EPIs, calculating the depreciation of equipment, all from the same sources of survey that would be used if the administration were to acquire such items directly.

A data source that is very important for the outlining of prices in these procurements are contracts, executed by both the agency promoting the procurement, as by other agencies and entities. This source of consultation falls under the same rules previously mentioned, IN 5/2014 and TCU Ordinance 128/2014, respectively:

Article 2 The survey of prices will be carried out by using one of the following parameters: (Wording amended by Normative Instruction n. 7, 29 August 2014)

[...]

III – Procurement similar to that of other public entities that are either underway or concluded within one hundred and eighty (180) days prior to the date of the survey of prices;

Article 8 The price estimates regarding labour for outsourced services shall be drawn up based on an analytical spreadsheet of labour and input costs composition, and shall abide by the following criteria:

I – the wages of contractor employees shall be established based on a collective employment agreement or convention of the relevant professional category;

II – if there is more than one category in a same procurement, wages will be fixed based on the collective agreement or convention of each professional category;

III – if there is no employment collective agreement or convention, wages will be fixed based on average prices obtained in market survey, in specialized sources, in private companies of the sector relevant to the tendered object, or in public agencies;

IV – the social charges and taxes shall be fixed in accordance with the specific laws; and

V – The input amounts will be established based on price survey, in terms of Articles 9 to 11 of this Ordinance, or at prices fixed in the relevant legal instruments.

Paragraph 1 If there is no employment collective agreement or convention, the value of the meal voucher can be set based on the simple arithmetic mean of the amounts paid by at least three (3) the contracts of the Federal Court of Accounts (TCU) or other agencies and entities of the Public Administration.

Paragraph 2 The input amounts can be fixed as a percentage of the service provider's wage amounts, using as reference the same percentage of a previous contract having same object.

Paragraph 3 The invitations for tender shall provide that the offered price shall expressly state the costs of meal and transport vouchers.

Paragraph 4 The invitations for tender and the contracts shall provide that the payment of

the meal and transport voucher will be mandatory, regardless whether not provided for under a collective employment agreement or convention.

Paragraph 5 The invitations to tender shall provide that the remuneration amount of contractor employees shall not be less than that provided under a collective employment agreement or convention, or, if appropriate, than the amount fixed by the Administration.

Paragraph 6 For technical reasons, duly justified, wages may be fixed at amounts higher than those of collective employment agreements or conventions.

Considering that the main outsourced services are common to the vast majority of public agencies (cleaning, surveillance, telephone services, reception, elevator management, building maintenance, administrative support), it will not be a difficult task to find good pricing parameters from this source.

Thus, the average cost of each unit of the spreadsheet can be calculated based on cost spreadsheets of contracts of other agencies that are in force.

The only item which, as previously explained, cannot be controlled is the BDI. But even this cost can be predicted based on the average rate verified among several contracts that were surveyed.

With this methodology, the administration will have an approximate forecast that is much closer to the reality of the market, in addition to preventing companies from practicing overprice or spreadsheet game.

### 3. CONCLUSION

Thus, on using pricing data obtained through recent procurements, performed by the agency itself or by other agencies and entities:

- a. preferably the tenders searched should be those that were conducted by agencies and entities located within the same region and with a similar institutional mission to that of the agency conducting the survey;

- b. data can be used related to the classified prices, whether in an isolated manner, or by an average taken among those classified; and,
- c. the use of collected data depends on previous critical evaluation, in order to avoid overpriced data or impracticable prices;

When pricing data is obtained from price record minutes, the agent who is in charge, after verifying that this refers to an object with similar characteristics to that which is intended to be hired, must inquire at the managing agency whether the minutes continue to generate business, in order to obtain greater security from their data.

As to the prices collected in a survey on the web:

- a. surveys on the web are especially useful for the purchase of products in small quantities, since one is not being able to calculate the final price on the basis of economies of scale;
- b. widely known e-commerce websites must be accessed, or websites of the suppliers themselves;
- c. websites of sales intermediation or auction must not be used;
- d. the characteristics of the object should be similar to those of the object to be acquired by the administration;
- e. promotional prices must not be collected, since they do not represent the 'normal behaviour' of the market;
- f. seek to include the freight in the final price, so that the pricing includes the cost of distribution of the product. For this purpose, it is sufficient that the analyst should perform the purchasing procedures (as if he/she were the consumer), until the product freight is calculated.

Finally, when the price survey relates to a service agreement, the agent who is in charge should prevent the forwarding of the spreadsheet of costs in blank to be filled in by companies of the relevant sector, and proceed to survey each component in order to find the total estimated value.

## REFERENCES

BRASIL. Constituição da República Federativa do Brasil. Brasília: Senado, 1988.

\_\_\_\_\_. Lei n.º 8.666, de 21 de junho de 1993. Regulamenta o art. 37, XX da CF/1988, estabelecendo normas gerais de licitações e contratos da Administração Pública. Brasília: Senado, 1993.

\_\_\_\_\_. Lei n.º 10.520, de 10 de janeiro de 2002. Institui a modalidade pregão e dá outras providências. Brasília: Senado, 2002.

\_\_\_\_\_. Decreto n.º 3.555, de 08 de agosto de 2000. Aprova o regulamento para a modalidade de licitação denominada pregão para aquisição de bens e serviços comuns. Brasília: Senado, 2000.

BRASIL. Ministério do Planejamento, Desenvolvimento e Gestão. Instrução normativa n.º 05/2014, de 27 de junho de 2014. Dispõe sobre o procedimento administrativo para a realização de pesquisa de preços para aquisição de bens e contratação de serviços em geral. Brasília: MPOG, 2014.

BRASIL. Tribunal de Contas da União. Portaria n.º 128/2014, de 14 de maio de 2014. Dispõe sobre a licitação e a execução de contratos de serviços no âmbito da Secretaria do Tribunal de Contas da União (TCU). Brasília: TCU, 2014.