

Preliminary technical studies: the Achilles heel of public procurement



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ABSTRACT

The purpose of this study is to present the preliminary technical studies (ETP) and the Demand Officialization Document (DOD), as essential elements for the planning and success of public procurement. In this regard, it presents public procurement as a work process consisting of interconnected stages, each one with defined steps, inputs and products. Next, we will address the DOD as a first effort for the success of procurement, to further ahead examine the Preliminary Technical Studies (ETP), demonstrating the legal requirement for their formulation in public procurement, their content and adequate level of detail, and the difficulties for their sound formulation.

Keywords: governance; efficiency; public procurement; preliminary technical studies; demand officialization document.

1. INTRODUCTION

According to the article published in *Folha de S. Paulo*, the public sector in Brazil spends badly. “The combination of high and inefficient public spending has slowed the growth of Brazil.” According to this same article, based on data from the *Credit Suisse*, between 1999 and 2014, even though the public sector spent 38.3% of the Gross Domestic Product (GDP), Brazil had an average growth rate of 3.1% of its economy. In other emerging market countries, despite the public-

sector spending much less, around 25% of the GDP, economic growth was much more expressive, in the range of 5% (Fraga, 2016).

The survey of *Credit Suisse* also shows that Brazil is the 28th among 39 countries in public spending efficiency. If health and education areas were to be analysed in isolation, the situation of the country would prove to be even more unfavourable, with Brazil occupying respectively the 34th and 33rd positions (Fraga, 2016).

The inefficiency of the Brazilian public sector should not be attributed only to deviations arising from fraud and corruption. Much is due to inefficiency in the management of the procurements, as for example, the absence of annual planning for the organizations’ purchases, and, more specifically, the lack of adequate planning of each acquisition.

TCU’s systemic ongoing inspections have found that the deficiency in planning is a frequent cause of weak points in public procurement (appellate decisions 2,328/2015 and 2,339/2016, both by the TCU Full Bench).

Thus, the purpose of this study is to present the preliminary technical studies (ETP) and the Demand Officialization Document (DOD), as essential elements for the planning and success of public procurement. In this regard, it presents public procurement as a work process consisting of interconnected stages, each of which with defined steps, inputs and products. Next, we will address the DOD as a first effort for the successful outcome of the procurement, so as to further ahead examine the Preliminary Technical

Studies (ETP), demonstrating the legal requirement for their formulation in public procurement, their content and adequate level of detail, and the difficulties for their acceptable formulation.

We hope these brief lines contribute to the debate about the relevance of the ETPs for the improvement in public procurement and, consequently, in the efficiency of public services.

2. PUBLIC PROCUREMENT AS A WORK PROCESS

The acquisition of an asset or the hiring of a construction work or service does not summarize the bidding procedure or the direct procurement procedure. Public procurement must be regarded as a process starting from the time when the request of the goods, construction works or services to be acquired is made, until the time when the hired solution is delivered, producing results which meet the need that originated the former.

To regard public procurement as a process means to understand that a series of activities exist, with well defined inputs and outputs, and that each activity depends on the one that precedes it. A process ‘is a set of interrelated or interactive activities than transform inputs (inputs) into products (outputs).’ (BRAZILIAN ASSOCIATION OF TECHNICAL NORMS, 2015a). A process therefore comprises ‘an ordered set of work activities, in time and space, with a beginning and an end, in addition to well defined inputs and outputs. It aims at generating results for the organization and may exist at different levels of detail, being commonly related to

managerial areas, with ultimate and support functions” (BRASIL, 2013c, p. 13).

As elements of a process we can identify: input, processing, output, suppliers and customers (Figure 1). The inputs are products or information needed to start a process. The processing is the set of activities carried out to transform inputs into outputs. The outputs are the results (products or information) that will be delivered to customers, who can be internal or external. The suppliers, which can also be internal or external, are the origin of inputs, which provide something so that the process begins.

According to NBR ISO 9001 (Brazilian Association of Technical Norms, 2015b), in the search for quality it is important that organizations, private or public, should be able to properly view their work processes, seeking to identify steps, inputs and products that they generate. Occasions on which organizations with the same social objectives produce a different outcome are not rare, for the simple fact that one manages their work processes better than the other.

The so-called management by process or *Business Process Management* (BPM) ‘is a systematic approach to management that deals with business processes as assets, which directly activate the performance potential of the organization, promoting organizational excellence and business agility” (BRAZIL, 2013, p. 13). As the approach to the process deals with quality management principles (ABNT NBR ISO 9000), understanding that a process of work is an asset consists in understanding that – as well as machinery, vehicles, furniture, real estate and securities – it is a valuable asset for the success of the organization. After all, how many organizations

Figure 1:
Elements of a process

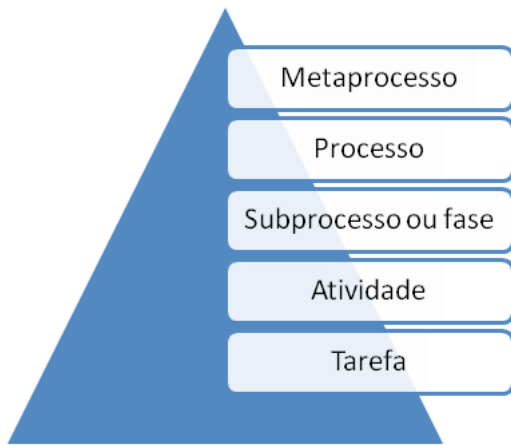


Source FEDERAL DISTRICT, 2014, pg. 8, (adapted).

have their work processes kept under lock and key, which represents the major differential when compared to their competitors?

Processes can be regarded hierarchically, starting with the macroprocesses, followed by the processes, sub-processes or phases, of the activities and tasks (Figure 2). This hierarchical view does not refer to importance, but to the level of detail that one wishes to deal with. Macroprocess is a more general view of the process and usually comprises several processes. Tasks are a set of instructions that can be directly implemented.

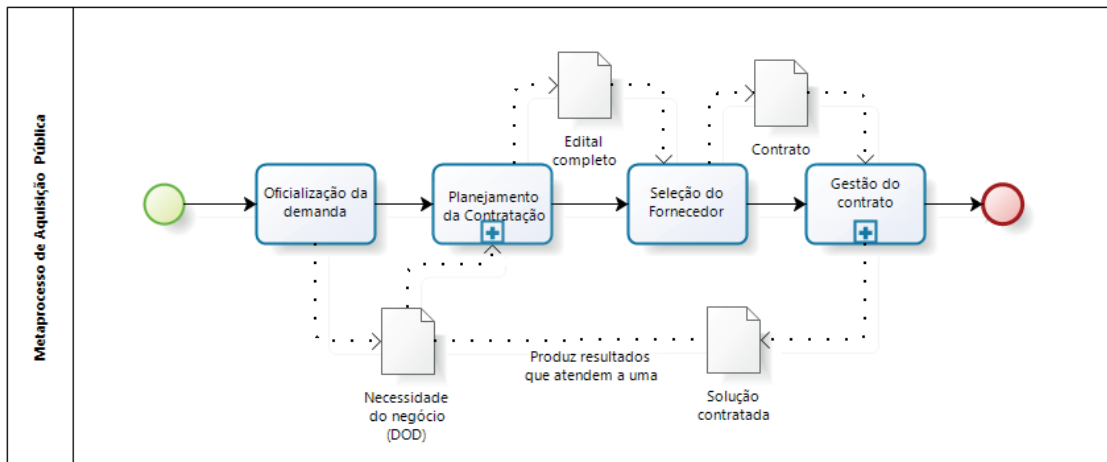
Figure 2:
Hierarchical view of the processes



A process is a set of activities (herein as per *latusense*) which receives inputs and transforms these into a product destined to meet the need of a customer (internal or external). Sub-process or phase ‘refers to a specific part of the process, composed of a set of activities that require their own inputs and result in sub-products that contribute to the final product of the process’. Activity is a set of tasks, which, in its turn, is the smallest division of labour, a partition of the activity with specific routine or procedure (PALUDO, 2013, p. 343).

Public procurement can be understood as a sequential process composed of three phases: the planning of the procurement, the selection of the supplier and contract management (Figure 3). These phases are inter-related, and the result of the subsequent phase depends on the outcome of the previous one. The planning of the procurement receives as input a demand (business need) and generates as output a full competitive bid notice, including the term of reference (TR) or basic project (BP) for the procurement. The selection of the supplier receives as input the full competitive bid notice (output of the planning phase) and generates as output the signed contract (rules of the hiring, but the winning bidder is the one who will perform according to the rules). In its turn the contract management receives as input the signed contract and generates as output a solution which produces results which meet the need that generated the procurement. One of the procurement planning stages is the formulation of the ETPs.

Figure 3:
Metaprocess for public procurement



Source: Federal Court of Auditors – Report of Appellate Decision 2,622/2015 – Full Bench.

3. OFFICIALIZATION OF THE DEMAND: INITIATING THE PROCUREMENT PROCESS

The requisition of that which you intended to acquire starts the procurement process. More precisely, the requisition will initiate the procurement planning phase. The requisition, properly formulated, is the first effort to ensure that the organization performs a good procurement. Imagine that, after the procurement planning stages and selection of the supplier, one reaches the conclusion that the hired solution is not suitable for the needs of the purchaser.

The purchasing sector is usually not the one that performs the selection of the supplier, therefore this gap – the purchasing sector understands it is demanding the acquisition of a particular solution and receives another – is a probability that cannot be disregarded.

The officialization of the demand's objective is to prevent this imbalance and still ensure that the solution required by particular sector is perfectly understood by the sectors that are going to plan the acquisition, make the selection of the supplier and manage the contract. This officialization should always take place by means of an 'Demand Officialization Document – DOD', which, according to Article 9 of Normative Instruction 4/2014 of the Secretariat of Logistics and Information Technology, of the Ministry of Planning (IN-SLTI 4/2014), is the 'document containing the details of the

need of the Area Requesting the Solution to be met by assuming the contract”.

It is certain that this norm aims at regulating the procurement information technology solutions in the context of the Executive Federal Powers, but these guidelines can also be carried out in other procurements. The Federal Court of Accounts (TCU), in a document entitled 'Risks and Control in Procurements' (RCP), has recommended the use of the DOD regardless of the type of purchase intended, providing that the lack of formalization of the demand entails a high risk of carrying out a procurement that does not meet a need of the organization. To reduce this risk, the TCU instructs that the senior management of the organization should publish norms, creating the requirement that all procurements should be initiated with the DOD, and that the legal advisors should, when the bidding procedures or direct procurement are submitted, deny their progression if such document is missing (BRASIL, 2014b). In this sense, at a recent judgment of the TCU, Appellate Decision 1,840/2016- full bench, the 'absence of formalization of the demand for the procurement duly supported by the demanding area, with information guidelines for the formulation of the technical studies, in breach of its Manual of Procedures of Events' has not been left unnoticed.

The aforementioned IN-SLTI 4/2014, in its Article 11, requires as minimum content of the DOD to be filled in by the area requesting solution: the need of



procurement, considering the strategic objectives of the organization; the motivation and the statements of the results to be achieved by the procurement; the indication of source of funds for the procurement; and the indication of the party of the requesting area for composing the planning team. It must be noted that these elements, besides clearly formalizing and identifying who the author of the demand is, already allow for first analysis of that which is intended to be hired in terms of strategic alignment.

The need for the procurement should be aligned with the strategic objectives of the organization, demonstrating to which strategic planning goals the acquisition contributes. This alignment exercise helps in the dissemination of the strategic planning itself within organizations. Binding the intended procurement to an organizational purpose forces the requesting party, who must be the author of the DOD, to reflect on what importance such procurement has for achieving the institutional mission.

The motivation of what will be acquired is the legal duty of the person who manages the public affairs, since the reason, the factual and legal circumstances that lead to the practice of the act, is one of the elements of validity of the administrative act. The duty to substantiate, as a principle that obliges the public administration, is expressed in Article 2 and in Article 50 of Law 9,784/1999, which determines that the administrative acts must be substantiated, with the indication of the facts and the legal grounds.

The indication of source of funds is also legally required, since, in accordance with the Law 8,666/1993, Article 7, III and Article 14, the construction works, services and purchases can only be hired upon a plan of budgetary funds to ensure the payment of obligations.

The DOD will initiate the procurement planning process, which usually needs to be performed by a team, since procurement planning requires multiple skills that normally cannot be mastered by a single person. For example, to hire an advertising service for a campaign of vaccination, skills are required in at least three areas: advertising, vaccination, and competitive bidding and contracts. A representative, indicated by the requesting sector in the demand officialization document, should also participate in the procurement planning.

Thus, the first effort that organizations should perform to hire well is to require that the procurement process should be initiated with the DOD, as a formal and standardized document, containing at least the elements mentioned above. The second effort towards

improvement is to formulate a preliminary technical study, the procurement planning phase.

4. PRELIMINARY TECHNICAL STUDIES

According to the *guide of good practice in information technology solutions procurement*, by TCU, ‘the formulation of the preliminary technical studies constitutes the first step in procurement planning (preliminary planning)’. Also according to the Guide, the preliminary technical studies serve to ‘a) ensure the technical feasibility of the procurement, as well as the treatment of its environmental impact; b) substantiate the term of reference or the basic project, which is only formulated if the hiring is considered feasible, as well as the workplan, in the case of services’ (BRAZIL, 2012, pg. 39).

The formulation of ETPs is a duty imposed upon Public Administration. In accordance with Articles 7 and 6, IX, of Law 8,666/1993, the hiring of works and services shall be preceded by formulating a basic project (BP), thus understood as:

A set of necessary and sufficient elements, with appropriate level of precision, to characterize the work or service, or set of works or services that are the object of the procurement, *formulated on the basis of* in the indications of *preliminary technical studies*, that ensure the technical feasibility and the proper treatment of the environmental impact of the undertaking, and enables the cost appraisal of the work, and the definition of the methods and the implementation period, which should comprise the following elements. [*We highlight*]

By the above definition, it can be inferred that the ETP is a control, which seeks to reduce at least two risks: of the Administration trying to hire something that is technically impracticable or that threatens the environment.

By reading the above provision, the logic that presents itself is that all procurements should be preceded by a basic project and that all basic projects are formulated based on the ETPs. Thus, the sequence in time provided for in the legislation consists in first formulating the ETP then preparing the basic project (based on the ETP), and next, hiring (based on basic project).

Law 10,520/2002, which addresses modality of electronic procurement of goods and common services, while the term ‘preliminary technical studies’ does not appear in its provisions, makes clear the need of this

instrument when it provides, in its Article 3, III, that in the preparatory phase of the electronic procurement, the records of the procedure should state ‘the indispensable technical elements on which they are based.’”

Law 12,462/2011, which instituted the Public Procurement Differentiated Regime (DRC), in its Article 2, IV.a, also brought the ETP requirement that precedes the formulation of the basic project. In the same sense, Law 13,303/2016, which instituted the legal bye-laws of state companies, also provided, in its Article 42, VIII, the requirement that the procurements should be preceded by ETPs, additionally explaining that this will, in the same way as provided for in Law 8,666/1993, substantiate the formulation of the basic project. Moreover, the preliminary technical studies will substantiate not only the basic project, but also of the term of reference and the workplan (in this case, when hiring services, in accordance with the Decree 2,271/1997).

In the context of the Federal Court of Accounts, it is possible to envisage consolidated precedents regarding the requirement of preliminary technical studies, whether for the procurement of construction works, services or purchases (Appellate Decision 3,215/2016 – Full Bench; Appellate Decision 212/2017 – Full Bench; Appellate Decision 681/2017 – First Chamber; Appellate Decision 1,134/2017 – Second Chamber).

The ETP requirement also applies in cases of direct procurement, waiver or nonrequirement for competitive bidding. The elements of a direct procurement process are not restricted to those provided for in Article 26 of Law 8,666/1993 (characterization of emergency or hazardous situation, reason for choice of supplier or performer, justification of prices, document for approval of research projects, justification and ratification of the act of waiver and due publication in the Official Journal). Article 38 of Law 8,666/1993 specifies that ‘the procurement process will be started with the opening of an administrative proceeding, duly filed, registered and numbered, containing the respective authorization, a brief indication of its object and of its own funds for the expense”, and posteriorly shall be attached to this proceeding several elements, among which, as provided in Item VI, ‘technical or legal opinions issued on the procurement, waiver or nonrequirement for competitive bidding’, which demonstrates that the processes of waiver and nonrequirement are not autonomous processes (FERNANDES, 2009, p. 641).

This is the understanding, that has been adopted by the TCU for long, as seen in the vote of the reporting judge of Decision 233/1996 – 1st Chamber:

Therefore, the procurement procedure, in its broadest sense, as stated in the Law, covers both direct procurement and those carried out upon prior competitive bidding procedures (...) However, if the manager’s duty and objective is to ensure the best offer for the agency, the preceding acts should be only part of a process, to which is added, also, as the case may be, the elements set out in paragraph one, Items I to III, Article 26 of Law n. 8.666/93. In this context, it must be concluded that there are no autonomous processes of waiver and nonrequirement of competitive bidding, and therefore, the provisions contained in the main paragraph of Article 38 apply.

Thus, we conclude that, both in the process of competitive bidding and direct procurement, elements such as basic project or term of reference are indispensable. Moreover, considering that in accordance with the provisions analysed in this section, these elements should be formulated based on the ETP, the logical consequence is that formulating the ETP is necessary in any procurement process, regardless whether the choice of supplier is through competitive bidding or direct procurement.

The mandatory requirement and the order of production of ETP basic projects (or terms of reference) and contracts are more clearly and explicitly comprised in the non-statutory norms that govern procurement of information technology (SLTI IN 4/2014, Resolution of the National Council of Justice and Resolution 182/2013 of the National Council of the Public Ministry 102/2013). This fact derived from the need to outline the procurement processes in the form of a work process and not the specificity of the its TI object, as you could be understood at first. This assertion is supported, for example, in the fact that the draft of the Normative Instruction that will replace the current Normative Instruction of the Secretariat of Logistics and Technology Information of the Ministry of Planning 2/2008 (for contracting services in general), which was submitted to public consultation in August 2016, contained analogous provisions.

4.1 WHAT SHOULD AN ETP CONTAIN?

While the demand for ETP is a legal duty to substantiate public procurement, the law does not expressly provide what its content should be. In addition to the reference in the definition of a basic project (Article 6,

Item IX), Law 8,666/1993 makes another reference to the ETPs in Article 46, when it addresses the use of the procurement types ‘best technique’ or ‘technique and price,’ for hiring work that is predominantly intellectual, such as the formulation of ETPs. And, unfortunately, it is only in these two points that Law 8,666/1993 expressly mentions the ETPs, since, as can be seen in the RCA (BRASIL, 2014b) and in the guide to IT procurement (BRAZIL, 2012), all the proposed contents for ETPs are based on such Law, there being therefore several indirect references made to ETPs.

It is known that ETPs aim at ensuring the technical feasibility of the procurement and the treatment of environmental impact, substantiating the term of reference, the basic project, and the workplan. Thus, the ETP content must be sufficient to ensure that it fulfils its objectives set forth in the Law.

In the context of the TCU, the suggestion to reduce the risk of irresolution as to the content of the ETPs has been the instruction so that the Superior Governing Agencies (OGS) (those who have competence to regulate certain subjects) should define the content of

the preliminary technical studies, which would serve as a starting point for the procurement planning team.

The RCA (BRASIL, 2014b) and the guide to IT Procurement (BRAZIL, 2012) suggest some elements that should be part of the ETP. Other documents have also been published with the aim of defining the content of the ETPs, as for example, the quick guide for quick consultation to the Supreme Court of Justice (STJ) on the theme (Brazil, [2016?]).

While the majority of these documents have been created to direct TI procurements, one can observe that, from the content required of ETPs, they also apply to other procurements. This is since the RCA, that was conceived for procurements of every type of object, proposes analogous contents.

The public manager must make clear what is *the need of the solution* that will be hired; affirming to have sought the optimization of the work processes, and that, even so, the procurement proves to be necessary.

The public manager must demonstrate which is *the alignment of certain procurements to the plans of the agency*, as for example, with the targets of the organization’s

Table 1:

Contents of the preliminary technical study

RCA and TCU Guide for IT procurement	IN-SLTI 4/2014	STJ Preliminary Technical Studies: Quick Consultation Guide
<ul style="list-style-type: none"> » Need for procurement » Alignment of the plans of the agency » Procurement requisites » Relationship between the planned demand and the quantity of each item » Market survey » Justifications for the choice of the type of solution to be hired » Preliminary price estimations » Description of the solution as a whole » Justifications for or against the payment of the solution in instalments » Intended results » Measures for adjusting the environment of the agency » Risk Analysis » Declaration on whether the procurement is feasible or not 	<ul style="list-style-type: none"> » Definition and specification of the needs of the business and technologies » Evaluation of the different solutions » Analysis and comparison between the total costs of the identified solutions » Choice and justification for the choice » Evaluation of the needs for adjustment of the environment of the agency » Evaluation and definition of human and material resources for the implementation and maintenance of the solution » Definition of the mechanisms for the continuity of the supply of the solution, in the event of contractual interruption » Declaration of feasibility of the procurement 	<p>Demand Officialization Document – DOD</p> <ul style="list-style-type: none"> » Need for procurement » Alignment between the procurement of the solution and the institutional strategic plans » Intended results <p>Analysis of Feasibility of the Procurement</p> <ul style="list-style-type: none"> » Procurement requisites » Survey of the demand » Market survey » Choice and justification of the most adequate solution » Justifications for or against the payment of the solution in instalments » Measures for adjusting the environment of the agency » Indication of the estimated budget » Declaration on whether or not the procurement is feasible <p>Sustentation Plan</p> <ul style="list-style-type: none"> » Strategy of the Court’s independence in relation to the contracted party » Strategy for contractual transition and termination » Strategy for the continuity in the case of a possible interruption of the contract » Material and human resources necessary for the continuity of the business <p>Procurement Strategy</p> <ul style="list-style-type: none"> » Model of performance and management of the contract <p>Risk Analysis</p> <ul style="list-style-type: none"> » Risk analysis

strategic plan. This effort leads the manager to think about the extent to which the solution intended to be purchased will contribute for the achievement of the agency's mission. (BRASIL, 2014b).

Whether for the procurement of IT solutions, or for other solutions, the *procurement requisites*, including the minimum quality requisites, must be defined in order to be able to know which offer would be most advantageous for the Administration. An analysis between the *planned demand and the quantity of each item* must also be performed, in order to avoid unnecessary contractual amendments, or even the need to conduct new competitive biddings, with the consequent loss of economies of scale (BRASIL, 2014b).

Knowledge of the market, in order to know what solutions would meet the need of the Administration, together with the *justification of the choice of the type of solution to hire*, are essential elements of any acquisition, since it is not possible to purchase something without knowing 'what is being offered by the market' and without making a choice between the options available.

Preliminary price estimates in their turn are indispensable, insofar as it will be necessary to know whether there are sufficient resources to move forward with the procurement.

The solution as a whole must be described in the ETP, not only for guiding the formulation of offers by the bidders, but also as to reduce the risk of the Administration not having their needs met due to some es-

sential part of the solution not having been considered (BRASIL, 2014b).

The *analysis of the instalment payment of the object*, to decide whether the object must be paid in instalments, and, if so, in what way, is a measure that seeks to fulfil the principle of isonomy in the procurements. In this regard, reference is made to the forms of the instalment payment mentioned in the RCA: formal instalment (more than one bidding or adjudication per item) or material (authorization for participation of consortium or the performance of sub-procurement).

What are the *desired results with the acquisition* should also be highlighted in the ETP, including so that the regularity of the results of the executed contract is not restricted to the verification of its formal aspects. In this procurement planning phase, it should already be clear in the ETP that the Administration 'aims, by the procurement of the solution, in terms of economy, effectiveness, efficiency, better use of human, material and financial resources available, including with respect to positive environmental impacts (...) as well as, if appropriate, improvement of the quality of products or services, at meeting the need for the procurement' (BRASIL, 2014b).

The ETPs content must also include *verification of the arrangements for adequacy of the environment* of the agency, for receiving the solution that will be hired. Will it be necessary to change or make electrical installations? Is the physical space appropriate? (BRASIL, 2014b) Not rarely, for example, equipment is purchased without



adequate infrastructure for these to operate, generating a huge amount of waste of funds.

Finally, besides elements of the ETP, a *risk analysis* must be performed before the procurement, identifying risks and assessing the probability of their event and impacts, as well as indicating which actions would be required to reduce the identified risks (BRASIL,2014b).

These elements of ETPs are necessary so that, at the end, but still in the stage of formulating the ETPs, the procurement planning team should declare whether or not the procurement is feasible. If it is feasible, the formulation of the basic project, the term of reference or the work plan begin.

4.2 THE ADEQUATE LEVEL OF DETAIL

Perhaps herein lies the difficulty of fixing a minimum content for the ETP, since the level of detail of the ETPs should vary in accordance with the risk of the procurement to be performed. As presented at the beginning of section 4, the ETPs is a control mechanism and, therefore, its level of detail should be proportionate to the risk, in accordance with the Article 14 of Decree Law 200/1967.

So, for example, whereas the discontinuity of IT services can lead to a paralysis in the provision of public services, such procurements usually require greater efforts, including normative ones, for the definition of content the ETPs, as can be seen in the IN-SLTI 4/2014 (Table 1)2014. Similarly, complex engineering construction works would deserve greater detailing in the ETPs, which also occurs with purchases of materials in significant volumes and complexity.

One can observe that it is not recommendable to delete items from the content of the preliminary technical studies when the procurements have a lower risk, because, as mentioned above, the RCA (BRASIL,2014b) and the guide to IT procurement (BRAZIL, 2012) demonstrate the legal obligation to produce this information. Thus, the way to simplify the ETPs in lower risk procurements is to perform their activities in a more simplified manner. Take for an example, the market analysis by seeking solutions. If the engagement presents a major risk, more time should be invested consulting the market and analysing the available options (in the case of extreme risk, for example, perhaps all the known solutions should be consulted). However, if the procurement is assessed as having low risk, this analysis can be done in a more simplified manner (perhaps by using only the solution currently hired and one more



alternative, for example). It must be noted though, that in both cases a market analysis must be performed.

4.3 THE DIFFICULTIES FOR FORMULATING A GOOD ETP

Notwithstanding the formulation of ETPs constituting a legal duty, there are still many obstacles to be overcome by the organizations in order that they should contribute to more effective public procurement.

The lack of standardization of that which should be comprised in the ETPs is one of them. The TCU has sought to remedy this gap by means of guidelines, as for example, the RCA. Specific initiatives of some public organizations that have published regulations internally instructing the formulation of ETPs and establishing their minimum content, as in the case of the Superior Court of Justice (Table 1), also aim at filling in this gap.

Another issue that must be taken into account in the formulation of the ETPs is that it must be done by a multidisciplinary team.

The quality of the procurement planning depends on the team designated to conduct it. Therefore, the team should be chosen with care, so that,

as a whole, they possess knowledge of the legal framework legislation, precedents, the solution to be hired, the internal regulations of the agency that affect the procurement (e.g. PSI), and the practices of the agency that might influence the procurement (e.g. model of the term of reference adopted in the agency) (Brazil, 2012, p. 52).

The IN-SLTI 4/2014, in its Article 2, IV., lists, as required members of a procurement planning team, the technical expert, the servant that understands technically about what will be purchased, the administrator, namely, the servant of the administrative area with knowledge of the laws of competitive bidding and contracts, and the requesting party, who is the servant that represents the area requesting the solution and who knows the problem that must be solved with the procurement.

Lack of procurement planning and the reactive culture of public administration, whether as a result of their own lack of planning, or due to the unexpected inflow of funds, are also elements that hinder the formulation of ETPs. According to a survey of the TCU, Appellate Decision 2,622/2015 – Full Bench, performed with the 376 organizations of the federal public administration, only 46% of organizations perform the of procurements planning process, approving a procurement plan (or similar document) for a minimum period of one year, and only 27% of the formulated plans are published on the Internet.”

It is necessary that organizations should have an annual plan of their purchases. In Appellate Decision 2,348/2016 – Full Bench, the TCU has expressed the need for procurement planning to address, at least:

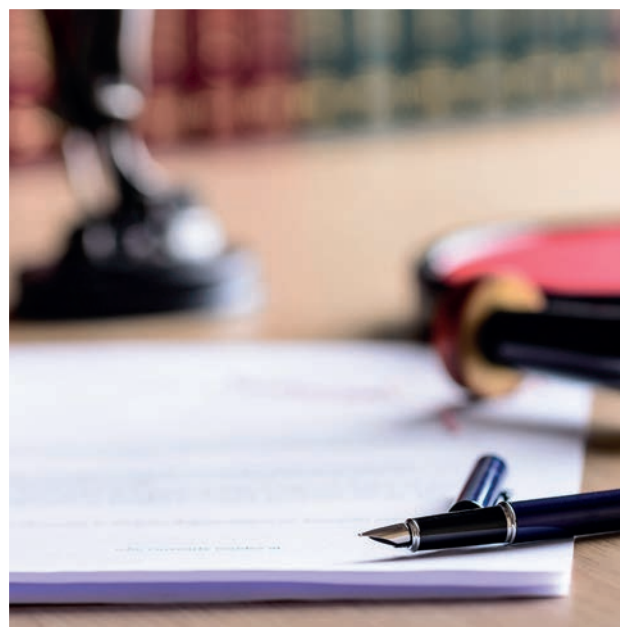
the formulation, with the participation of representatives of various sectors of the organization, of a document that materializes the procurement plan, containing, for each intended procurement, information such as: description of the object, estimated quantity for the procurement, estimated value, identification of the purchaser, justification of the need, estimated period for the procurement (e.g., month), program/action borne (a) by the procurement, and strategic goal(s) supported(s) by the procurement;

One of the requirements of the ETPs is that there-in must be demonstrated that the procurements are aligned with the plans of the organizations – strategic plan, procurement and logistics and other specific plans. However, if the lack of planning tends to be the keynote of organizations, the lack of dissemination of plans that

are formulated becomes another obstacle for formulating ETPs. In order for there to be an alignment of the procurement with the plans of the organization, it is necessary that at least the planning team that will draw up the ETPs should be aware of these plans in order to give their opinion about the feasibility of the procurement, especially demonstrating how such procurement will contribute to the achievement of the set targets.

The scenario of difficulty in the formulation the ETPs may improve by encouragement of standard procurements by the superior governing agencies (OGS), so that the Public Administration, in its majority, should purchase goods, services and works with standard specifications. In this case, the part that requires greater effort for formulating the ETPs should be performed once only, for the definition of the standard specification (for example, a market analysis, specification of requirements, benchmarks of unit prices, among others), and those who will use the specification standards shall prepare the missing part, which tends to require less effort (justification of need, estimated quantities, among others). The study of standardization, its relationship with ETPs and its implication in efficiency gains is a topic to be discussed in more detail at the appropriate time.

Finally, it is noteworthy that it is expected that the effort for formulating ETPs for procurements performed for the first time should be greater compared to that required for procurements that have already become a routine of the agency, for which the previous ETP is already relied upon as a starting point. For





organizations that do not yet practice the formulation of ETPs, perhaps the best way would be to draw them up primarily for procurements that offer a greater risk for the continuity of their business.

5. CONCLUSION

This article addressed the preliminary technical studies (ETP). Starting from the demand officialization document (DOD), the goal was to present the relevance of the DOD and the ETPs for the successful outcome of public procurements.

It started proposing to observe public procurement as a process of work with interconnected stages, each of which with well-defined inputs and products. It highlighted the importance of the public manager regarding the procurement process as a valuable asset for the organization, who shall see to its continuous improvement.

For the successful outcome of the procurements, it was observed that the first effort should be the officialization of the demand by means of an official document, signed by the requesting area, and comprising: the requesting area; the need for the procurement, considering the strategic objectives of the organization; statements of the results to be achieved by the procurement; the indication of source of funds for the procurement; and the indication of the requesting party for composing the planning team. It was reinforced that this document, which will initiate

the process of procurements, is relevant in such manner that the solution that is being requested should be perfectly understood by the team that will perform the procurement. It was also affirmed that it is recommendable that the public organizations should officially establish the obligation of formulating the demand officialization document, planning their minimum content.

It was argued that ETPs, which are the product of the step following the procurement planning process, should be the element based on which the planning team, through risk analysis, should decide in favour or against the performance of the procurement. It was noted that, despite its legal requirement for all purchases, including those conducted through direct procurement, the law does not expressly provide for its content, though however the effort of some organizations, such as the Federal Court of Accounts, has been verified in the sense of specifying what the minimum content of a preliminary technical study should be.

In line with the principle of efficiency, it was affirmed that the level of detail of ETPs depends on the risk of the procurement, since we cannot lose sight of the fact that this is a mechanism of control, and that therefore its level of detail should be proportional to the risk. One can observe that it is not recommendable to delete items from the contents of ETPs in procurements with less risk, but rather to perform their activities in a more simplified manner.

In addition to the need to define a minimum content for ETPs, it was mentioned that the success in their formulation still depends on overcoming certain obstacles in public organizations, such as the need for multidisciplinary teams for their formulation, the lack of public procurement planning, and the absence of disclosure of institutional plans (required for checking the alignment between the procurement and the organization's mission).

Finally, it has been speculated that the scenario of difficulty in the formulation the ETPs can improve by encouragement of standardization of procurements by OGS, and further, that the effort to perform the ETPs for the first time is usually higher in comparison to those procurements that have already become a routine of the agency. It was further suggested that for organizations that do not yet practice the formulation of ETPs, perhaps the best way would be to draw them up primarily for procurements that offer a greater risk for the continuity of their business.

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