

# The principle of separation of functions and its application to public expenditure management: An analytical approach in the context of public bidding and contract administration



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## ABSTRACT

This paper addresses the principle of separation of functions and its application to public expenditure management. It is evident that when functions are separated in the public bidding and contract administration processes, there is a reduction in the occurrence of conflicts of interest, errors, fraud and corruption. At the same time, one notices improved administrative streamlining, work productivity and public administration. Thus, the separation of functions significantly reduces ethical misconduct.

**Key words:** Administrative control. Public expenditures. Separation of functions.

## 1. CONTEXT

In the hustle-bustle of everyday life in the realm of public administration, one can imagine, in a purely intellectual exercise, a situation in which, although somewhat extreme and unusual but nonetheless possible, a public official of a certain government agency is responsible for identifying an item for procurement, for requisitioning the item, researching (and estimating) the market price, preparing the bidding notice, publishing the bidding announcement, conducting the bidding process, responding to questions and grievances (if they occur), publishing



the results, consummating the purchase, validating the expenditure (verification) and receiving the item. In order for this example to be plausible, issuance of a legal opinion regarding the draft bidding notice, approval of the bidding process, payment of the expense and conformation of management records have been intentionally excluded from the public official's list of responsibilities.

In short, based on the above scenario, one can see that identifying an item, selecting the supplier, receiving the item and verification (validation of the expenditure) are all in the hands of just one public employee. In other words, one public employee controls various steps in the process of the public expenditure of funds.

Let us now imagine a different scenario, where distinct sections or divisions of a certain government agency, each with their own public officials, have to, independently, identify and requisition an item, estimate the market price, prepare the bidding notice, conduct the bidding process, consummate the purchase and validate the expenditure. In other words, in contrast with the first scenario, public officials from different sections or divisions have different functions during the public expenditure process. That situation is neither extreme nor strange. It is perfectly rational, logical and feasible.

Responding quickly and spontaneously, which of these two scenarios is more likely to produce

conflicts of interest<sup>1</sup>, errors, omissions, fraud and corruption? Expanding upon this way of thinking, one might ask how the principle of separating functions can restrict or lessen the occurrence of conflicts of interest, errors, omissions, fraud and corruption in public expenditures?

This paper takes an analytical approach to the principle of administrative control of the separation of functions and its application to public expenditure management through the example of public bidding and contracts administration, with the aim of answering the following questions: What really is the principle of separation of functions? How is it implemented? What is its importance or relevance in the process of managing public expenditures?

## 2. CONCEPTUAL-THEORETICAL REFERENCE

Beginning with the basic tenets that should determine administrative procedures for public expenditure management, the separation of functions is one of the fundamental principles of internal control. As explained by Aragão (2010, p. 224):

“The principles of internal control that must be followed by public entities and monitored by internal government auditors are: cost-benefit analysis, proper qualification and rotation of employees, delegation of authority and

identification of responsibilities, the existence of procedural manuals, separation of functions and compliance with guidelines and legal standards.”

According to the Manual of Internal Control of Federal Executive Power (2001, p. 67-68), in applying separation of functions:

“the structure of the unit/entity should separate the functions of authorization/approval of operations, execution, control and accounting, in such a way that no person has powers and responsibilities that contravene this principle.”

This means, for example, that all the stages, or at least the most critical stages, in the public expenditure process cannot be concentrated in the hands of a single public official or agent.

Therefore, as part of the above-stated intent, and in seeking improved management and to impede the concentration of power, Resolution CGPAR No. 3/10, which addresses practices of corporate governance in state-owned companies, requires:

“Art. 1 [...] the adoption, by state-owned companies, of the following guidelines, with the aim of improving corporate governance practices related to the Board of Directors: a) the separation of management functions, by not bestowing the duties of Chairman of the Board of Directors, or similar position, and those of Chief Executive Officer on the same person, even temporarily, in order to prevent a concentration of power.”

For purposes of clarifying the separation of functions, the macro function of SIAFI No. 020315 (accounting standard) is cited below, emphasizing that:

“8.1.1 The separation of functions is a basic principle of internal administrative control that separates, by distinct employees, the functions of authorization, approval, execution, control and accounting.”<sup>2</sup>

In accord with the discussion above, Decision No. 5615/2008-TCU-2<sup>a</sup> Câmara (Federal Court of Accounts), emphasizes that the principle of the separation of functions

“1.7.1. [...] consists of separating the functions of authorization, approval, execution, control and

accounting, and avoiding the accumulation of functions in a single employee.”

In agreement with this thinking, Decision No. 3031/2008-TCU-1<sup>a</sup> Câmara, highlights the impossibility of

“1.6 [...] allowing one employee to carry out all the stages of expenditure, namely, the functions of authorization, approval of operations, execution, control and accounting.”

According to the Guidelines for Internal Control Standards for the Public Sector (2007, p. 45-46), by the International Organization of Supreme Audit Institutions (INTOSAI), the purpose of the separation of functions is to “reduce the risk of errors, waste and improper procedures and the risk of not discovering such problems.” Furthermore, according to INTOSAI (2007, p. 46):

There should not be just one individual or team in control of the key stages of a transaction or event [or process of public expenditure]. All duties and responsibilities should be systematically divided among a certain number of individuals in order to assure effective review and evaluations. Key functions include authorization and recording of transactions, execution and review or auditing<sup>3</sup> of transactions.

It should be noted that from INTOSAI’s perspective, the separation of functions aims, above all, to reduce the risk of errors, reduce the risks of not discovering improper procedures, avoid waste, enable effective reviews and evaluations of conduct, prevent collusion and increase the efficiency of internal controls. INTOSAI (2007, p. 51) further elaborated on its view of the separation of functions, asserting that

“policies, procedures and organizational structure [should be] established so as to prevent a single individual from controlling all important aspects of computerized operations, which could thereby enable that individual to engage in unauthorized actions and obtain access to assets and records.”

Following the above-outlined reasoning, the System Auditing Manual CFC/CRC (2007, p. 109), affirms that the separation of functions is a

“basic principle of internal control that consists of separating functions, namely, authorization, approval, execution, control and accounting operations.”

Summarizing what is stated in the CFC/CRC Manual, the Apostille of Internal Control and Government Auditing of the State of Minas Gerais (2012, p. 5), notes that

“no person should be responsible for all phases of an operation [which] should be executed by persons and sections independent of one another.”

In this same context, the CGU (Federal Comptroller General) Manual of Internal Control (2007, p. 50), instructs preventing that “physical control and accounting for transactions [are done] by the same person.”

From a broader perspective, the application of the principle of separation of functions to public expenditure management is clearly stated in Decision No. 2507/2007-TCU-Plenário, in which it highlights that

“5.2 [...] those persons in charge of requests for acquisitions of goods and services should not be the same persons responsible for approving and contracting expenditures.”

### **3. SEPARATION OF FUNCTIONS IN BIDDING AND CONTRACT ADMINISTRATION**

With regard to public bidding, Law No. 8666/93, which implements Article 37, subsection XXI of the Federal Constitution of 1988 (CF/88), separating functions, does not permit the creator of a preliminary or detailed project, a public employee or the head of a contracting agency to participate in bids under the following circumstances:

“Art. 9 – The following are prohibited from participating, directly or indirectly, in bidding on or performing a job or service and from supplying goods that they themselves require: I – the creator of a preliminary or detailed project, whether an individual or an entity; II – the company, alone or jointly, responsible for preparing the preliminary or detailed project

or of which the project creator is an officer, a manager, a shareholder, or owner of more than five percent (5%) of the voting shares or controlling shareholder, the expert responsible or subcontracted; III – an employee or officer of the contracting agency or who is responsible for the bidding process. § 1 – Participation is permitted by the creator of the project or by a company referred to in subsection II of this Article, in bidding on a job or service, or in its execution, as a consultant or expert in the functions of inspection, supervision or management, solely to assist the interested Agency. § 2 – The foregoing provisions of this Article do not prevent the bidding on or contracting of a job or service that includes the preparation of a detailed project by the contracted party or for the price previously set by the Agency. § 3 – For purposes of this Article, indirect participation shall mean the existence of any technical, commercial, economic, financial or employment ties between the project creator, whether an individual or entity, and the bidder or party responsible for the services, supplies and jobs, including the supply of goods and services to the bidder or such party. § 4 – The provisions of the preceding paragraph apply to members of the bidding committee.<sup>4</sup>

Addressing the above issue, Justen Filho (2008, p. 151-152) surmises that the limitations imposed by the above-referenced law derive from the morality and equality that should permeate the process of public contracting, as well as from the competition that should be part of the process:

“The prohibitions of Article 9 derive from the principles of public morality and equality. The law creates a type of impediment, similar in meaning to the laws of Civil Procedure, to participation by certain people in the bidding process. The existence of a personal relationship between those that choose the bidder and those that bid is considered risky. This relationship can, in theory, produce distortions that are inconsistent with equal treatment under the law. The mere possibility of harm is enough for the law to take precautions. Instead of relying on a future investigation, which will show the agent’s improper conduct, the law requires this prohibition in advance. This prohibition consists

of proactively removing from the situation any person who, by virtue of personal ties with the actual situation, could stand to benefit in a way that is contrary to the ideal of equal treatment under the law. The prohibition includes those who, due to the specific situation in which they find themselves, have the means (theoretically) to interfere with competition and produce undeserved and unacceptable benefits for themselves and third parties.<sup>5</sup>

Thus, consistent with current standards and doctrines in assessing actual cases, the Federal Court of Accounts, in Decision No. 3360/2007-TCU-2<sup>a</sup> Câmara, recommends,

“16.1.4 in following the principle of separation of functions, [the adoption of] measures so that a job is not supervised by the same company contracted to perform the job.”

Following the same thinking, Decision No. 3067/2005-TCU-1<sup>a</sup> Câmara points out that one

“1.7 observes the accounting and administrative principle of Separation of Functions by adopting controls that prevent the possibility of a single employee from acting as both supervisor and performer under the same contract.”

Elaborating further on the meaning of Article 9 of Law No. 8666/93, in light of the possibility of fraudulent and anti-competition actions due to the absence of a separation of functions, Altounian (2012, p.195), concludes:

“Even worse is the possibility of fraudulent changes to the specifications and amounts in the bidder’s preliminary project, intended to prejudice proposals by competitors, making them less competitive and, consequently, preventing the Agency from contracting the most beneficial proposal.”

The principle of separation of functions should be the overriding factor in the public expenditure ritual.<sup>6</sup> Thus, for example, in bidding that involves obtaining goods or contracting information technology services, there should be distinct

individuals with well-defined, separate duties in the planning, supervisory and management functions, as provided in Regulation SLTI/MP No. 04/10, which deals with contracting information technology services for agencies that are members of the Information and Technology Resource Management System (“SISP”) of the federal government:

“Art. 2 – For purposes of this Regulation, the following meanings shall apply [...] III – Contract Planning Team: the team involved in planning, comprised of: a) a Technical member: an employee from the Information Technology area, referred by a proper authority in that area; b) an Administrative member: an employee from the Administrative area, referred by a proper authority in that area; c) Requisitioning member: employee from the Requisitioning area, referred by a proper authority in that area; IV – Contract Administrator: employee charged with managerial, technical and operational duties related to contract administration, referred by a proper authority; V – Contract Technical Supervisor: employee from Information Technology, referred by a proper authority in that area to supervise the technical aspects of the contract; VI – Contract Administrative Supervisor: employee from the Administrative area, referred by a proper authority in that area to supervise the administrative aspects of the contract; VII – Contract Requisitioning Supervisor: employee from the Requisitioning area, referred by a proper authority in that area to supervise the contract from the point of view of implementing an Information Technology solution.”<sup>7</sup>

The existence of so many players, namely, the contract administrator, the requisitioning member, the technical member and the administrative member, and the respective requisitioning supervisors, indicates the importance of separating functions in contract planning and supervision, as well as in contract administration, which especially requires expertise in each separate function.

Therefore, in emphasizing the importance of separation of functions for administrative control, TCU’s Guide for Good Practices in Contracting Information Technology Solutions (2012, p. 234), states that “the separation of functions is a form of basic control [...] that should permeate the structure

of all the agency's job processes, and not just those in the IT area." Based on such reasoning, in separating the bidding and supervisory functions, Decision No. 100/2013-TCU-Plenário is instructive regarding:

"9.20.1. [t]he necessity of substituting contract supervisors and their assistants that are in the situation of third parties or the equivalent, and ineffective, for staff members [...] that have not participated, directly or indirectly, in the bidding of the contract to be supervised, so as to adhere to the principle of control by separation of functions [...]."

In addition to separating the requisitioning, technical and administrative functions, Regulation SLTI/MP No. 04/10 urges separating the functions of evaluating, measuring performance and supervising IT contracts:

"Art. 6. In cases where the evaluation, measurement of performance and supervision of an Information Technology solution are the subject of a contract, the contracted party providing the Information Technology solution should not also evaluate, measure performance and supervise."

Also, with regard to the subject of the contract, as shown in the above-cited regulation, it should be noted that:

"Art. 5 The following may not be the subject of a contract: I – more than one Information Technology solution in a single contract; and II the management of information technology processes, including managing the security of information. Technical support for planning and evaluating the quality of Information Technology solutions can be the subject of a contract, provided that it is under the exclusive supervision of officials of the contracting agency or entity."

Similarly separating a contract's performance and supervisory functions, Article 3 of Regulation SLTI/MP No. 02/08, which contains rules and guidelines for contracting ongoing services, stresses that:

"§ 2 The agency shall not contract the same service provider to execute and supervise the

subject of the contract, thereby assuring the requisite separation of functions."

With regard to the execution and supervisory functions in public bidding and contract administration, and in accord with the provisions of Article 3, section 2 referenced above, Article 19 of Regulation SLTI/MP No. 02/08, emphasizes that it is necessary to have:

"II – a specific provision to prohibit the awarding of two or more services to the same company, when, by their very nature, the services bid on require the separation of functions, such as executing and supervising, and thereby ensure the ability of all bidders to participate in all instances and establish the order of awarding bids among them."

In this context, TCU's Guide for Good Practices in Contracting Information Technology Solutions (2012, p. 157) establishes the separation of functions between the contract supervisor and the committee or employee responsible for receiving the services provided:

"with respect to the receipt of services, in Article 73, subsection I, paragraphs a and b, of Law No. 8666/1993, there is a separation of functions between the contract supervisor, who receives the services provisionally, and the receiving employee or committee, which receives the completed service."

Moreover, according to TCU's Guide for Good Practices in Contracting Information Technology Solutions (2012, p. 39), it is essential that there be a separation of functions between the contracting process and IT management, and finally

"to guarantee that whomever identifies the object for bidding does not engage in contract management in order to prevent creating ambiguities in the contract that the agent can use to the agent's advantage in administering the contract, thereby possibly causing loss to the public coffers and further impeding the discovery of such losses."

By way of example, one can envision the presence of the principle of separation of functions

during bidding by auction, provided for under Order No. 5450/05, since, with the aim of minimizing conflicts of interest<sup>8</sup>, reducing subjectivity and preserving impartiality in judging challenges to the auctioneer's decisions, the following line of action is adopted:

“Art. 8 The appropriate official (the official authorized to approve expenditures), pursuant to duties prescribed in the rules or statutes governing the agency or entity, may [...] rule on appeal, challenges to the auctioneer's decisions<sup>9</sup>; V – award the bid when there is an appeal.”

With further reference to bidding by auction, the separation of functions is evident in the acts of preparing for auction, approving the auction terms and conducting the event, as provided in Order No. 5450/05:

“Art. 9 In preparing for the auction electronically, the following shall be observed: I – auction terms prepared by the requisitioning agency, [...]; II – terms of auction approved by the authorized official (authorized to approve expenditures); [...] VI – designation of the auctioneer [responsible for conducting the event] and his team of assistants.

In addition to the above-cited example of separation of functions, as between the requisitioning agent (responsible for preparing the auction terms) and the official responsible for identifying the object and estimating the price (the financial official), Order No. 3555/00, which approves the regulation for acquiring ordinary goods and services through bidding by auction, states that:

“Art. 8 The preparatory phase of the auction must comply with the following rules: [...] III – the authorized official, or, by delegation of authority, the financial official, or the administration official responsible for purchases, should: a) identify the object for the event and its estimated value as shown on a spreadsheet that is clear, concise and objective, according to the auction terms prepared by the requisitioning party, together with the purchasing department, following specifications used in the marketplace.

Ultimately, Decision No. 38/2013-TCU-Plenário clarifies the idea stated above, recommending, among other things, the separation of functions of the official with expenditure authority, the auctioneer, the contract supervisor and the storage official, under the following terms:

“9.2.1 establish criteria for selecting employees that receive and certify goods and services, in a manner that avoids them engaging in other, incompatible activities, such as the official that authorizes expenditures, the auctioneer, members of the bidding committee and the official in charge of storage.”

Separating the requisitioning individual (or unit) from members of the bidding committee or support staff, Decision No. 747/2013-TCU-Plenário, emphasizes:

“9.1.5. promoting the separation of functions in the processes of acquiring goods and services, in following good administrative practices and strengthening internal controls, so as to prevent the individual responsible for the request from participating in conducting the bidding process, while integrating bidding committees or support staff in the auctions.”

The principle of separation of functions is intended, among other things,

“to prevent the operations pertaining to an event (public bidding and contract administration) to be done all by a single person or within a single area. In addition, the separation of functions is beneficial because it prevents fraud (and corruption) and the unauthorized use of assets (public resources), as it promotes interaction among different areas and people.” (BRASILIANO, 2010, p. 15).

Decision No.. 5840/2012-TCU-2<sup>a</sup> Câmara adds to this notion by stating that

“9.6.7. in respecting the principle of separation of functions, one should avoid designating the same persons to act in the contracting process as the requisitioning party, the auctioneer or member of the bidding committee, contract supervisor and

official responsible for the verification of services or receipt of goods.”

With regard to what directly and specifically affects the stages of public expenditure, linked by commitment, validation of expenditure (verification) and payment (extinguishing the obligation)<sup>10</sup>, Decision No. 1099/2008-TCU-1<sup>a</sup> Câmara instructs that “1.3.3. one follow the principle of separation of functions, adopting measures such that the entity’s purchase, payment and receipt of goods and services are performed by different employees,” and in the case of the public sector, by distinct officials.

#### 4. SCHEMATIC DIAGRAM OF THE PRINCIPLE OF THE SEPARATION OF FUNCTIONS

With respect to events and contractual actions, Figure 1 below, which breaks down the separation of functions from the perspective of public bidding and contract administration, brings together the separation of functions under the principle of

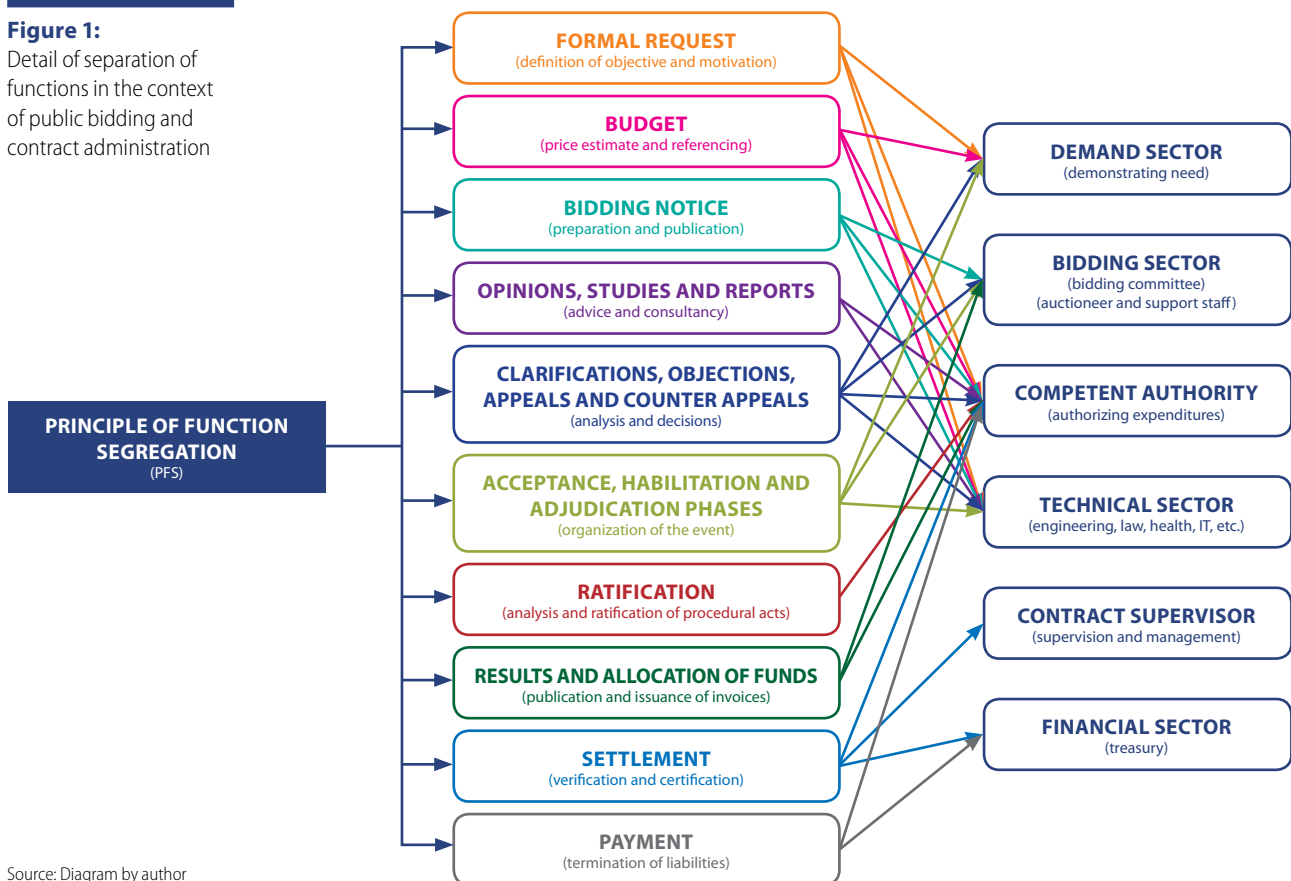
administrative control, revealing its distinct nuances and different players.

From preparing the formal request, which involves identifying the object and the reason behind the request, to bidding and through to payment (extinguishing the debt), one can see that, with the exception of approval, which is solely up to the official authorized to approve expenditures, no other action should go forward with fewer than two employees or public officials.

Based on Figure 1, one notes that distinct employees participate and act, in different contexts, in concert with the principal of separation of functions. No employee or public agent should be fully responsible for the entire public expenditure process.

One also notes that, in the diagram, a single “player” participates in various acts or “roles” at different times in the expenditure cycle. These actions and procedures bring about numerous benefits that relate to the principle of separation of functions. Among them are increased administrative control of each phase in the process, the division of labor by

**Figure 1:**  
Detail of separation of functions in the context of public bidding and contract administration



Source: Diagram by author



specialization with increased productivity, a reduction in conflicts of interest, errors, fraud and corruption, and greater transparency and efficiency.

### 5. SUMMARY OUTLINE

Figure 2 below, which is a summary outline of the principle of separation of functions, shows the application of the principle and its effects on the processes involved in public expenditure, in the context of public bidding and contract administration.

Studying figure 2, which is a summary outline of the effects of the principle of separation of functions, one can understand how that principle has the following immediate and direct effects: a) specialization by dividing up tasks, which leads to increased productivity (as a secondary effect); b) the emergence of reverse supervision with system-wide interventions, which reduces the problem of conflicts of interest; and c) reduced risk of errors, fraud and corruption with constraints on the incidences of uneconomic actions.

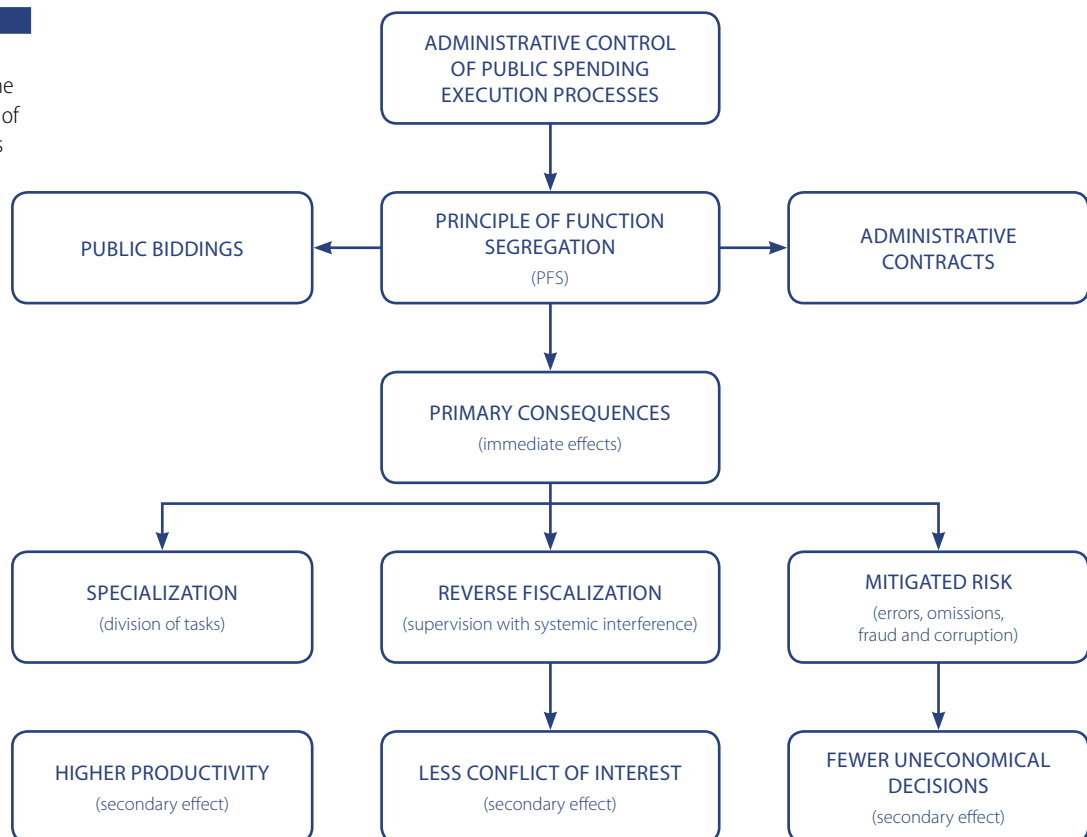
In complete agreement with this reasoning, the Guide for the Implementation of the Internal Control

System in the Accounting Court of Espírito Santo - TCES (2011, p.18), concurs with such assertions, as follows:

“the essential tasks and responsibilities [in public expenditures], authorization, management, verification and review of the transactions and facts, should be assigned to different individuals. With the goal of reducing the chance of errors, waste and improper acts, and the likelihood that these kinds of problems will not be discovered, it is essential that all major aspects of a transaction or operation not be concentrated in the hands of a single individual or section.”

Thus, the separation of functions allows for each task performed by a public employee to be verified by another employee who is responsible for carrying out the next step in the process. Such a system and procedures lead to a virtual cycle of monitoring, supervision and administrative control, with real improvements in efficiency, transparency and controls over actions taken.

**Figure 2:**  
Summary outline of the effects of the principle of separation of functions



Source: Diagram by author

## 6. CONCLUSION

Along with other results, when one separates the functions involved in the expenditure of public funds, it allows the action subsequent to the task performed to be verified by a different public employee than the one that performed the task. Such conduct creates a positive result in the realm of administrative control, by generating continuous vigilance and a permanent barrier to possible unethical conduct.

Thus, in the ambit of public bidding and contract administration, Decision No. 415/2013-TCU-Plenário, explains the necessity of

“9.1.7. regulating the separation of functions in those areas that perform duties that pertain to bidding and contracts, so as to minimize the possibility of misappropriations and fraud.”

Aside from deterring biased behavior and conflicts of interest, the separation of functions, through the division of labor, results in specialization with appreciable increases in efficiency and productivity in the performance of procedures related to the expenditure of public funds.

Another positive outcome from the separation of functions, apart from the relief from excess work, at times exhausting, that befalls the official who, alone or with limited resources, carries out all actions that precede the public expenditure process, is the reduction in inefficiency from the cumulative effect of executing tasks, and the restraint on risks of errors, omissions, fraud and corruption.

In separating functions and not allowing a single employee to be responsible for all of the most critical (sensitive) stages of public expenditure, it creates, metaphorically, a healthy environment of deterrent and apparent “policing,” in which tasks performed by a public official are followed up and monitored by another, thereby inhibiting unlawful and/or uneconomic activity.

Thus, except for those criminal cases where a gang clandestinely infiltrates the entity, acting together with the top administrative official, the application of the principal of separation of functions produces positive results, both

in the public bidding process and in contract administration.

Therefore, the separation of functions stands out as a principle of administrative control that brings greater efficiency, rationality, impartiality, transparency and effectiveness to the processes involved in public expenditure. Without the separation of functions, there surely will be weak management, undue interferences, lax controls, favoritism and every type of disfunction imaginable.

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## NOTES

- 1 The conflict of interest occurs when psychological or environmental forces, or specific circumstances, influence, condition and channel attitudes and decisions. According to Freire and Teixeira (2009, p. 7), a conflict of interest could be characterized as [...] a [situation] whereby someone has a personal or private interest in a particular matter, and influences, or tries to influence, the actions of another, in such a way that the latter acts in a biased way, and the former's objective is achieved. Personal or private interest refers to any potential advantage for the person, for members of their family, relatives or circle of friends. According to D'Agosto (2011, s/d), "When a professional, by performing his or her activities, has a personal interest in the

result of a negotiation that is different to the other party's, there is a conflict of interest. Depending on how their professional activity is performed and remunerated, the conflicts can be minimized or exacerbated."; According to Law No. 12813/13, which deals with conflict of interest in exercising professional functions in the Federal Executive Branch, and subsequent impediments to exercising professional functions," *in verbis*: "art. 3 For the purposes of this Law, conflict of interest is defined thus: a situation generated by the confrontation between public and private interests, which can compromise the collective interest, or influence, in an inappropriate manner, the exercising of the public office". With the intent of avoiding a conflict of interest in activities related to planning and the federal budget, the federal financial administration, accounting and internal monitoring of the Federal Executive Branch, Law No. 10180/01 clarifies *in verbis*: "Art 25. Subject to the provisions of Art. 117 of Law No. 8112, from December 11<sup>th</sup>, 1990, it is forbidden for the leaders of the organs and units in the Systems referred to in Art. 1 to exercise: I – leadership of political parties; II – liberal profession; III – other activities that are incompatible with the interests of the Federal Public Administration, in the manner outlined in the regulation".

- 2 For example, the separation of duties can also be clearly perceived in the Normative Instrument No.06/07, which governs the procedures pertaining to the accounting compliance records and management records, *in verbis*: "art. 8 – the record of the Management Compliance Records is the responsibility of the public servant formally designated by the Holder of the Execution Unit Manager, which features in the Role of Responsibilities, together with the respective substitute, who cannot have the function of emitting documents. Single paragraph. Exceptions to those compliance records which are the principle idea of this article are permitted when the Execution Unit Manager finds themselves justifiably impeded from designating different public servants to perform these functions, and seeing as, in this case, the compliance will be registered by the same person who is authorized to organize expenditure." A particularly interesting case of separation of functions that "exceeds" the scope of this text, but is still worth mentioning, is that of the Injection of Funds. According to Article 45 of Decree No. 93872/86, which deals with the unification of the resources of the National Treasure, and which updates and consolidates the relevant legislation, "§ 3. an injection of funds shall not be granted: a) to the person responsible for two subsidies; b) to the public servant whose job it is to store or use the material to be acquired, unless there is no other public servant to delegate to; c) to the person responsible for the injection of funds, who, when their term has expired, has not reported on his application of said funds." Symmetrically, Judgment No. 3412/2006-TCU-1<sup>st</sup> Chamber relates that there must be no "1.1.2. [...] granting of injection of funds to the same

person as he/she who is responsible for the financial sector". In this same line of jurisprudence, Judgment No. 2373/2009-TCU-2<sup>nd</sup> Chamber stresses that "1.5.1.1. avoids that the person responsible for granting the Injection of Funds also be the beneficiary".

- 3 Despite not being part of this analytical approach, the activities of the internal audit, given their importance for the monitoring process of public funds, deserve attention and consideration when it comes to the separation of functions. As such, when analyzing the principle of the separation of functions, from the perspective of the job of the internal audit, Nascimento (1997, p.18) claims that "the internal audit, as an eminently evaluative organ, should not participate in any operational activity that is the object of its evaluation because an impartial attitude cannot be expected from somebody evaluating their own behavior". From this point of view, Judgment No. 3096/2006-TCU-1<sup>st</sup> Chamber offers the following jurisprudence, *in verbis*: "1.3.4 abstain from granting Internal Monitoring activities which are not specific to the sector, in the interests of guaranteeing the separation of functions". In a similar vein, Judgment No. 578/2010-TCU-Plenary Assembly recommends that the following be adopted "9.6. [...] measures with a view to avoiding that internal auditors participate in activities that compromise the principle of the separation of functions between the former and the managers". Elucidating the aforementioned ideas in a complementary manner, that is, the use of the principle of the separation of funds as an effective mechanism for inhibiting conflicts of interest in, amongst others, the operation of internal audits, the Manual for the Audit of the Supreme Electoral Tribunal, TSE, (2008, p.35-36) highlights, *ipsis litteris*: "in the scope of the audit, the basic principle of the separation of functions must be observed, which consists of separating potentially conflicting attributions, such as authorization, approval, execution, monitoring and accounting of the operations. In light of the separation of functions, the auditor cannot express an opinion in the audit report on administrative tasks they themselves have performed. The auditors cannot assume extra-auditory operational responsibilities, so there is no weakening of objectivity, to the extent that what would be audited would be the activity for which those same professionals had authority and responsibility". It can thus be perceived that the auditing activities that refer to public spending, should not interfere with the execution or management activities of such expenditure so that the principle of administrative monitoring of the separation of funds is not infringed upon, which would create a conflict of interest.
- 4 Law No. 12462/11, which institutes the Public Hiring Law (RDC), also addresses the issue of the separation of functions with the with the intent of inhibiting, amongst other things, the conflict of interest, as specified in Articles 36 e 37.
- 5 According to Mendes (2011, p.152), the restriction mentioned "is presented as an assumption of smoothness of the event". As such, the same author, Mendes (2011, p.151), states the following: "the person who defines the solution or describes the object has the ability to impose, in a purposeful way, certain restrictions or even establish a direction capable of benefitting him".
- 6 According to Melo (2004, p.121), the observance of the principle of the separation of funds establishes, in sum, the following: "the person who buys should not receive the merchandise, and the person who pays should not maintain any link to or dependence on the person who buys, or the person who stores the purchased product".
- 7 For information and clarification, as per the provision of the Normative Instruction/SLTI/MP No. 04/10, *ipsis litteris*: "art. 24. The phase of Selection of the Supplier will conclude with the signature of the contract and with the designation of: I – the Contract Manager; II – the Fiscal Technician of the Contract; III – the Fiscal Applicant of the Contract; and IV – the Fiscal Administrator of the Contract. § 1. The appointments described in this article will be conducted by the competent authority of the Administrative Area, in accordance with numbers IV, V, VI and VII of Art. 2; § 2. The Fiscal Technician, Applicant and Administrator of the Contract will be, preferably, members of the Hiring Planning Team; § 3. The Hiring Planning Team will be automatically void upon signature of the contract".
- 8 In a broader context, extending beyond the sphere of execution of public expenditure, Law No. 9784/99, which governs the administrative process in the sphere of federal public administration, seeking to restrict the conflict of interest in the following way, *ipsis litteris*: "art. 18. It is prohibited for public servants or authorities to participate in an administrative process in the following instances: I – they have direct or indirect interest in the subject matter; II – they have participated or have come to participate as an expert, witness or representative, or if such situations occur involving their spouse, partner or relative to the third degree; III – if they are legally or administratively involved in a dispute with the person or their respective spouse or partner.
- 9 In accordance with provisions contained in Articles 58 to 70 of Law No. 4320/64, the phases of public spending are the commitment, the settlement (certified) and the payment (termination of the obligation).
- 10 In accordance with provisions contained in Articles 58 to 70 of Law No. 4320/64, the phases of public spending are the commitment, the settlement (certified) and the payment (termination of the obligation).