**Anti-Corruption Mechanisms Adopted by Brazil: Deterrence and Detection**

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The [Public Procurement Act](https://www.gov.br/compras/pt-br/nllc/LeideLicitaeseContratos14133traduzidaemingles.pdf) **(PPA or Law N. 14,133/2021)** regulates public procurement and administrative contracts in Brazil. This statute provides a detailed set of procedures and guidelines to public procurement and administrative contracts and is used by the federal government and by all subnational entities (states and municipalities) of the country. This latest version of the law results from an extensive reformulation of the previous statute (Law N. 8,666/1993). The intention of the legislature was to make Brazilian procurement process more resistant to corruption by incorporating best practices into the Brazilian legal system. In this brief article, I describe some of the anti-corruption mechanisms currently adopted by the country in the realms of deterrence and detection.

In the realm of deterrence, authorities have designed a severe system of penalties. A legal person involved in public procurement fraud will have to face penalties under three different laws: (i) **the Public Procurement Act**, (ii) **the Clean Company Act**, (iii) **Antitrust Act** (in the case of cartels).

The Public Procurement Act establishes four different penalties: written warning; fine; suspension of the right to participate in public tenders; and debarment. The debarment sanction makes the company ineligible to participate in public tenders or to contract with the entire Public Administration. Since some companies depend on administrative contracts to keep their financial health, debarment can mean a death penalty for them.

The [Clean Company Act](https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12846.htm) (**CCA or Lei N° 12,846/2013**) establishes two different sets of penalties: a set of penalties that can be administratively enforced, and another that can be judicially enforced. The administrative penalties include fines ranging from 0.1% to 20% of the gross revenue of the legal person, and publication of the condemnatory decision. The judicial penalties include: loss of the economic advantages obtained from the fraud; prohibition of receiving public funds; and compulsory dissolution of the company.

A problem arises in the case of cartels in public procurement, i.e., when companies that supposedly should behave as competitors collude to artificially allocate contracts among themselves. In that case, in addition to the sanctions of the CCA and the PPA, the company will have to face the sanctions of the [Antitrust Act](https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12529.htm) (**Law N° 12,529/2011**). Its sanctions include: a fine ranging from 0.1% to 20% of the gross revenue of the legal person; divestiture of assets; publication of the condemnatory decision; and exclusion from public procurements for a minimum period of 5 years.

The possibility of incidence of the Antirust Act in conjunction with the CCA has triggered an intense debate in Brazil about the severity of the combined penalties. Some commentators claim that it would constitute a case of double jeopardy and that cooperative efforts should take place between CGU (the anti-corruption agency) and CADE (the antitrust agency). There is a recent assessment of the OECD that suggests a definition of roles between the two agencies to make the anti-corruption system more reliable ([here](https://www.oecd.org/daf/competition/Fighting-Bid-Rigging-in-Brazil-A-Review-of-Federal-Public-Procurement-2021.pdf)).

In the realm of detection, Brazilian authorities have invested in transparency and technology.

The latest version of the Public Procurement Act created the National Public Procurement Portal ([here](https://www.gov.br/pncp/pt-br) and [here](https://www.bmalaw.com.br/en-US/conteudo/infraestructure-and-regulatory-government-affairs/brazils-national-public-procurement-portal-one-of-the-main-tools-created-by-the-new-government-contracting-legislation-went-online)), which is an Information technology system designed to centralize and convey all the relevant information on public procurement at a national level. This information includes contract opportunities; notices for contractor’s accreditation and pre-qualification; a central supplier registration system; a record of previous bids; among others. The idea is to make it easier for contractors to access information on upcoming bids and for civil society organizations to oversee public procurement processes in Brazil.

In an effort that had been praised by the United Nations, the [Office of the Comptroller General](https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/institucionais/arquivos/portifolio-ingles.pdf) **(CGU)** has created the [Public Spending Observatory](https://www.oecd.org/governance/procurement/toolbox/search/public-spending-observatory-brazil.pdf). It consists of an Administrative Unit that uses computer algorithms to detect misconduct in public procurement. Daily, procurement expenditure data is cross-checked with government databases and potential irregularities are identified.  By means of this analysis, a set of suspicious bids is detected, and auditors can further investigate them. This reduces the workload of government auditors and guarantees a more efficient investigation process, which is very important for a country like Brazil, where a significant amount of government purchases occur every month.

CGU also employs an [artificial intelligence solution](https://agenciagov.ebc.com.br/noticias/202310/cgu-atua-em-editais-de-licitacao-em-hospitais-federais-no-rio-de-janeiro-e-evita-desperdicio-de-cerca-de-r-8-33-mi) (called **ALICE**) to analyze public bids before they happen ([here](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10039446/)). It is a preventive measure that aims to identify suspicious patterns. For instance, Brazilian legislation requires a price estimation of the good before the bid. The program ALICE can detect when that price estimation is higher than an acceptable threshold. This red flag could simply indicate an error in the pricing survey process, but it could also indicate collusion between bid organizers and participating companies.

Corruption in public procurement is responsible for generating significant economic inefficiencies, such as: overpriced contracts; provision of low-quality services to the community; uneven competition among companies; misuse of public financial resources; among others. The Brazilian Government is aware that social development will only be possible by mitigating corruption and a good place to start is public procurement. In this short article, I exemplified some of the drastic legal reforms and anti-corruption mechanisms employed by the country to fight corruption. The substantial amount of financial resources recovered to the Public Treasury by means of preventive and reactive actions demonstrate that the country might be on the right path.