
SESSION 2: ACCOUNTING, AUDITING AND FINANCIAL REPORTING**THE AUDIT OF PUBLIC PROCUREMENTS:
EVIDENCE FROM GREECE****Georgia N. Kontogeorga^{*}, Dimitrios N. Angelaras^{**}**^{*} Hellenic Court of Audit, Athens, Greece^{**} Department of Law, Democritus University of Thrace, Komotini, Greece

How to cite: Kontogeorga, G. N., & Angelaras, D. N. (2023). The audit of public procurements: Evidence from Greece. In M. Tutino, V. Santolamazza, & A. Kostyuk (Eds.), *New outlooks for the scholarly research in corporate governance* (pp. 19–22). Virtus Interpress. <https://doi.org/10.22495/nosrcgp3>

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Received: 22.04.2023
Accepted: 02.05.2023
Keywords: Public Procurements, Pre-Contractual Audit, Supreme Audit Institutions, Greece
JEL Classification: H57, H83, K12, M42, M48
DOI: 10.22495/nosrcgp3

Abstract

Public procurements represent a significant percentage of gross domestic product (GDP) in Organisation for Economic Co-operation and Development (OECD) countries and are critical to the delivery of services like infrastructure, health and education. Public procurement is a strategic instrument and lever for achieving government policy goals such as stimulating innovation, promoting green public procurement and the circular economy, supporting access to public procurement contracts for small and medium-sized enterprises (SMEs), or promoting responsible business conduct (RBC) in global supply chains. This makes public procurement a strategic tool for achieving policy objectives (OECD, 2020). On the other hand, public procurement can provide opportunities for corruption. When seeking lucrative public contracts, companies look for any opportunity they can take advantage of that will improve their ability to secure a successful bid. Unscrupulous government officials can use their influential positions to attain favors and gifts from businesses pursuing public procurement tenders. Civil society ultimately bears the cost of public procurement irregularities. Collusion and corruption affect the quality of services provided, often to the detriment of service recipients (Bryan, 2015).

The concepts of transparency and accountability are nowhere more significant in public administration than in procurement, which may account for more than a third of all of a government's outlays. Yet while these attributes are paramount regarding good governance, they do not on their own distinguish procurement from many other activities of public process. However, there are many other elements that combine to make public procurement especially enigmatic, one of the least understood and most vulnerable areas of public administration (Schapper et al., 2006).

The financial crisis in Greece opened a wide dialogue concerning the reductions in administrative costs and administrative burdens. In this framework, the public procurement area was identified as one of the priority areas, as only from the codification and the simplification of laws and regulations the calculated reduction in administrative cost and administrative burden was estimated around EUR11.892.156 (OECD, 2014).

These last years, several reforms took place to simplify and harmonize the legal framework of public procurement in Greece with the EU Directives and good practices. The Hellenic Court of Audit (HCA) examines (*ex-ante*) the legality of the draft of public contracts with significant financial value, before its final signature and decides on its legality ("visa" or rejection), hence contributing to the sound financial management and preventing the non-legal disbursement of public money on time.

Procurement literature highlights the various challenges that tend to undermine the effective implementation of procurement in the public sector, that is, to enforce a practice that complies with the established procurement framework. On the other hand, the literature is replete with works proposing remedies for enhancing such compliance. In fact, several studies suggest ways of improving the agents' compliance with the agreed contracts. The mechanisms that have gained prominence in enhancing compliance include the application of monitoring and sanction arrangements (Mwakibinga & Buvik, 2013).

The preventive (*ex-ante*) audit has as an objective to prevent non-compliance, while the repressive audit identifies the non-compliance after its occurrence. Although a good legitimacy control, either preventive or repressive, contributes to the improvement of public administration management (García Crespo, 2005), strict scrutiny of legitimacy causes delays in the provision of public services and weakens the accountability of administrators (Cogliandro, 2000). For this reason, there is a tendency of limiting or even abandoning the *ex-ante* audit. However, in Greece in the field of public procurements, the *ex-ante* audit still exists for the draft procurements with a significant financial value (above a certain

threshold ie: EUR300.000,00 for the Services of Commissioners and above EUR1.700.000,00 for the Judicial Sections respectively)¹.

The importance of the pre-contractual audit is also proven by the fact that this kind of audit is guaranteed by the Hellenic Constitution. More specifically according to Article 98, *"the Hellenic Court of Audit is charged with... b. The audit of contracts of significant economic value in which the counterparty is the State or another legal entity assimilated to the State in this respect, as defined by law"*.

This study deals with this issue and presents the first results of the reforms which took place these last years.

From the analysis of the officially published data from the HCA for the financial year 2022, we found that the pre-contractual audit continued to identify infringements in around 9% of the total number of draft contracts submitted each year for audit to the Judicial Sections of the Court, while the number of cancelled contracts on average (for a period of 12 months) was equal to EUR44.382.304,76. As far as the Commissioners' Services is concerned, the percentage of non-legal contracts identified by the auditors was around 4% while the number of cancelled contracts on average (for a period of 9 months) was equal to EUR6.541.873,19.

From the analyzed data, we can make the following observations:

1. The pre-contractual audit remains a quite effective kind of audit since it is preventing the non-legal disbursement of public money thus confirming García Crespos's (2005) view that "pre-audit of public works contracts and acquisition of goods and services usually has an important preventive effect" (p 7).

2. In comparison with the past, the last decade, and the percentage of non-legal contracts fell from 10% to 9% (for Judicial Sections) and 4% (for Commissioners' Services) respectively. This can be the result either of the better compliance of the audited entities or the result of the reforms of the legal framework, which took, place these last years and simplified the public procurement regulation.

3. As the estimated value of the contract is increasing, the possibility of non-compliance is increasing too. We observed that the percentage of non-legal draft contracts is around 4% for draft contracts with an estimated value above EUR300.000,00. However, this percentage is increased to 9% for contracts with an estimated value above EUR1.000.000,00.

Previous research and data showed that pre-contractual audit is the most effective type of audit in comparison with other types of audit. However, future research should also focus on this issue, especially after the increase of the threshold to EUR1.700.000,00 and the reinforcement

¹ With the recent reform of the L. 5016/2023 (Government Gazette A' 21/04-02-2023), Article 51: Transfer of audit competence from the Judicial Sections of pre-contractual audit of the HCA to the Commissioners of the Court, the threshold was increased from EUR1.000.000,00 to EUR1.700.000,00.

of responsibilities of the Services of Commissioners. In addition, Judicial Sections with their decisions contribute also to the clarification of the legislation and to the compliance of audited entities with the laws and the regulations of public procurements, an overly complex and critical area. These decisions can promote compliance by interpreting the ambiguities of the law. The issue of unrestricted and immediate access of controlled entities to the jurisprudence of the HCA is of major importance. Moreover, SMEs can also benefit from free access to this jurisprudence for public procurements, by reinforcing their capacities in the competition, since very frequently, this kind of enterprises do not have enough resources to adequately staff their legal service (if any), especially in such a complex domain.

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