

Forensic accounting investigation of bidding processes in presential modality: a case study

Abstract

This study presents the case of a Forensic Investigation, in the area of Accounting, of a public bidding process in the form of an face-to-face auction in a city in the interior of Ceará, in 2009. In the bidding process under analysis, the object of the bid, whose total value was estimated at R\$ 16 million reais, was divided into several items, which were later grouped into 73 lots. Thus, the average price of each lot in the contest was estimated at R\$ 219 thousand reais, allowing several winning bidders to be included, instead of a single successful bidder for the entire bidding process. In the analysis of the documentation, it was found that five bidders were qualified, here referred to by the fictitious names Alfa, Beta, Gama, Delta and Sigma. The expert examined in detail the price of each of the 73 lots registered in the five Price Proposals submitted by the bidders, with the aim of verifying whether the prices proposed by the participants corresponded to the prices presented in the Auction Record, finding changes made by the auctioneer in the price of 7 lots. In view of the above, the Criminal Accounting Expertise is capable of detecting these fraudulent practices by collusion between public agents and bidding companies in events that took place in the form of in-person auctions, acting to combat irregular practices by public agents in bidding processes.

Keywords: Criminal expertise, accounting, bidding fraud

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Introduction

Until the enactment of Law No. 14,133/21, which restricted the procedure for presential bidding,¹ this format was widely used in contracts by various public agencies, since its regulation by Provisional Measure No. 2,026 of 2000,² which was converted into Law No. 10,520 of 2002.³ In the presential format, participants traditionally attend the bidding agency on the predetermined date and time, presenting their proposals through verbal bids. In contrast, in the electronic bidding format, there is no physical presence of the representatives of the bidding companies, as this type of bidding utilizes information technology resources through internet connectivity.⁴

Electronic bidding has advantages when compared to the presential format, as it is a faster modality, and the transparency of its procedures allows anyone to follow the process in real time, enhancing monitoring and reducing the risk of fraud.⁵ Nonetheless, during the years that Law No. 10,520 of 2002 was in effect, public administration, particularly at the municipal level, repeatedly justified its preference for the presential format of bidding compared to the electronic format, citing the possibility of immediate clarifications and price negotiations due to the interaction between the auctioneer and the bidders. In presential bidding, because the administrative acts are conducted in a public session by the auctioneer and other members of the bidding committee, there is reduced monitoring of public agents compared to the monitoring of electronic bidding, since, in presential bidding, the proceedings are only monitored by the participants present during the public session.

This study aimed to report a case in which forensic expertise was able to clarify a fraud involving collusion between public agents and private companies in a bidding process conducted in the presential modality. Being a bidding modality of the lowest price type, aimed at the acquisition of common goods and services of any value, presential bidding is widely utilized by public administration due to

the simplicity of its procedures, both in the presential format (while the law was in effect) and in the electronic format.

In cases of presential bidding with numerous items to be auctioned in a public session, the duration of the bidding may be extensive, which tends to reduce the attention of the bidding participants throughout the proceedings, compromising effective monitoring of the administrative acts performed by public agents. Under these circumstances, if a public agent intends to engage in illegal practices favoring bidding companies, the reduced monitoring in presential biddings increases the likelihood of illicit practices occurring in public administration.

Methods

This study presents the case of a Forensic Accounting investigation that revealed criminal practices, as provided in Articles 89 to 98 of Law No. 8,666 of 1993, the Bidding Law,⁶ involving collusion between public agents and bidding companies, in a bidding process that occurred in the presential modality in a municipality in the interior of Ceará in 2009. The contract in question involved the acquisition of an object divided into 73 (seventy-three) distinct lots, which grouped various items, totaling an approximate global value of R\$ 16,000,000.00 (sixteen million reais). The divisibility of the object in a bidding process aims to encourage broad participation from bidders who, although not capable of executing, supplying, or acquiring the entirety of the object, could do so regarding individual items or groupings of items in lots, thereby increasing the competitiveness of the bidding process.

Description of items and lots to be auctioned

In the case of the bidding process under analysis, the public administration deemed it economically and technically feasible to divide the object to be bid, which had an estimated global value of R\$ 16,000,000.00 (sixteen million reais), into various items grouped into 73 (seventy-three) lots. With this measure, the average price of each

lot was estimated at R\$ 219,000.00 (two hundred nineteen thousand reais), allowing multiple winning bidders rather than a single purchaser for the entire bidding process. Thus, various bidders could compete for the grouped item lots, increasing competition among suppliers, reducing the cost per item for public administration, and enabling the acquisition of better proposals. The quantity of items in each lot varied between one and fifty items, which made the documentation of the bidding process quite extensive due to the description of each item grouped by lot in the notice, in the minutes of the presental bidding session, in the bidding proposals, and in the comparative chart of the bidding lots, resulting in an exhaustively long presental bidding duration for the participants, considering the 73 (seventy-three) lots with varying quantities of items.

Documentation sent for expertise

The documentation sent for the forensic examination comprised approximately 1,500 (one thousand five hundred) pages, with the majority of this volume including documents related to the description of the items that made up the 73 (seventy-three) lots to be auctioned, both in the Notice and its annexes, in the price proposals from the five

bidders, as well as in the minutes of the presental bidding session and in the contracts with the winning companies. Upon analyzing the documentation sent for the forensic examination, it was found that five bidders were qualified, referred to here by fictitious names: Alpha, Beta, Gamma, Delta, and Sigma. In analyzing the price proposals by lot, each bidder registered a price for all items in a lot, without the necessity to submit proposals for all lots, only for those they intended to sell.

Results

In addition to other analyses related to the formal documentation of the auction, the expert examined in detail the price of each of the 73 (seventy-three) lots registered in the five Price Proposals submitted by the bidding companies, with the aim of verifying whether the prices proposed by the participants corresponded to the prices presented in the Auction Record, finding changes made by the auctioneer in the price of 7 (seven) lots. It is worth noting that the aforementioned changes were made to lots numbers 52, 53, 56, 58, 61, 65 and 67, which correspond to lots auctioned at the end of the auction, considering that the last lot was number 73, as shown in Tables 1, 2 and 3.

Table 1 Prices recorded in the price proposals submitted by the bidding companies

Lot	Bidders					
	Alfa	Beta	Gama	Delta	Sigma	Vencedor
52	40.019,20	40.326,40	40.729,60	40.166,40	40.556,80	ALFA
53	15.654,60	15.470,10	14.664,30	15.726,90	16.049,40	GAMA
56	240.645,00	(*)	24.0315,00	24.6265,00	241.135,00	GAMA
58	178.712,31	179.767,02	179.053,10	176.613,67	180.089,54	DELTA
61	137.710,00	(*)	117.062,80	(*)	103.528,55	SIGMA
65	18.048,60	19.012,40	(*)	19.140,00	19.198,00	ALFA
67	362.778,00	363.425,32	(*)	365.293,60	(*)	ALFA

(*) Did not present a proposal.

Table 2 Prices recorded in the auction record by the auctioneer and bidding team

Lot	Bidders					
	Alfa	Beta	Gama	Delta	Sigma	Vencedor
52	40.019,20	40.006,40	40.729,60	40.166,40	40.556,80	BETA
53	15.654,60	14.470,10	14.664,30	15.726,90	16.049,40	BETA
56	240.645,00	(*)	240.315,00	246.265,00	240.135,00	SIGMA
58	178.712,31	175.767,02	179.053,10	176.613,67	180.089,54	BETA
61	137.710,00	(*)	117.062,80	(*)	113.528,55	SIGMA
65	18.048,60	18.012,40	(*)	19.140,00	19.198,00	BETA
67	362.778,00	362.425,32	(*)	365.293,60	(*)	BETA

(*) Não apresentou proposta.

Table 3 Value of modifications made to the prices in the auction record by the auctioneer and bidding team

Lot	Bidder					
	Alfa	Beta	Gama	Delta	Sigma	Total ajuste
52	-	- 320,00	-	-	-	- 320,00
53	-	- 1.000,00	-	-	-	- 1.000,00
56	-	(*)	-	-	- 1.000,00	- 1.000,00
58	-	- 4.000,00	-	-	-	- 4.000,00
61	-	(*)	-	(*)	+ 10.000,00	+ 10.000,00
65	-	- 1.000,00	(*)	-	-	- 1.000,00
67	-	- 1.000,00	(*)	-	(*)	- 1.000,00

(*) Not applicable.

Modifications that benefited bidder Beta

From these 7 (seven) modifications found, 5 (five) benefited bidder Beta, who should not have been the winner because he did not present the lowest price for these 5 (five) lots, but became the winner after the aforementioned changes were made. In these five cases (lots 52, 53, 58, 65 and 67), the auctioneer reduced the value presented in Bidder Beta's Proposal in the Auction Record, so that it was lower than the bidder who had initially presented the lowest price, without anyone noticing in the In-Person Auction, due to the large number of lots being auctioned.

Modifications that benefited bidder Sigma

The other two modifications made by the auctioneer and the bidding committee benefited bidder Sigma. In the first modification (lot 56), the auctioneer reduced the price presented in the Bidder Sigma's Proposal so that it was lower than the bidder who had presented the lowest price. In the second modification (lot 61), the bidder Sigma had already presented the lowest price, and was therefore the winner. Even so, the auctioneer added R\$10,000.00 (ten thousand reais) to the value presented in the proposal in the Auction Record, keeping him as the winner and charging the municipality with the amount of the change.

Conclusion

This study aimed to report a case in which forensic experts were able to clarify a fraud by collusion between public agents and private companies in a bidding process in the form of an in-person auction. It was found that public agents can carry out illegal practices to favor bidding companies in cases of in-person auctions with numerous items to be auctioned in a public session, benefiting from the reduced monitoring in in-person auctions. The results of the expert analysis revealed that the prices presented in the Bidders' Proposals were different from those presented in the Auction Record, showing a case of fraud by collusion between public agents and bidding companies, in a contest held in the form of an in-person auction, confirming, based on the documentation presented, the occurrence of criminal practices in the bidding process.

In this case, the public administration violated articles 93 and 96 of Law No. 8,666 of 1993, the Bidding Law. Article 93 determines that anyone who "Prevents, disrupts or defrauds the performance of any bidding process" will be subject to a prison sentence of 6 (six) months to 2 (two) years, and a fine. Article 96 provides that anyone who "Defrauds, to the detriment of the Public Treasury, a bidding process for the acquisition or sale of goods or merchandise, or a contract arising therefrom: by arbitrarily raising prices; and/or by any means unfairly making the proposal or execution of the contract more onerous" will be subject to a prison sentence of 3 (three) to 6 (six) years, and a

fine. As can be seen in this case, the practice of infractions committed by public agents themselves is notorious, allying themselves with companies in order to circumvent the bidding process.

It is important to note that Accounting Forensics is capable of detecting these practices through documents and assisting in the proper application of sanctions and penalties, acting to combat irregular practices by public agents in bidding processes. The application of administrative penalties is a measure that is necessary to curb such practices, applying penalties to both public agents and companies in collusion with these agents. The strict application of administrative sanctions in these cases, including the temporary suspension of the right to bid and contract, has the power to curb the recurrence of irregular and fraudulent practices that frustrate the efficiency of public administration.

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None.

Conflicts of interest

The author declares there is no conflict of interest.

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