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Technological Article

The (In)Tolerance in the Application of Penalties in the Brazilian Public Administration

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A (In)Tolerância na Aplicação de Penalidades na Administração Pública Brasileira

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ABSTRACT

Objective: the option to enter into a contract for goods and services has been used by the public sector since ancient times, and to improve the productivity of these contracts, the actors involved have resorted to different forms of incentives. In Brazil, the only form of incentive formally admitted is a sanction, but empirical evidence suggests that some types of breaches of contracts have been overcome through negotiation. We intended to identify which factors influence management's (in)tolerance regarding misconduct in the execution of government contracts/purchases. **Methods:** this was based on multiple case studies, the authors' reflexivity, and abductive logic for the analysis of interviews with experts in the area, analysis of publications in official journals, internet information, and internal documents in 14 government institutions. **Results:** we present a list of factors that are (in)tolerable by the administration in managing contracts/purchases and their underlying reasons. As a theoretical contribution, this study expands the existing public administration literature by including, innovatively, tolerance theory and misconduct and relating them to administrative contract management. **Conclusions:** having as foremost concern to improve the productivity of administrative contracts, this study clarifies that tolerating can be legitimate and offers measures that can be taken to inhibit the occurrence of misconduct in government procurement and contracting, based on the recommendations of the servants involved in the management of administrative contracts. Still, a research agenda makes proposals for analysis of new factors and explanations eventually not captured in this study.

Keywords: public administration; administrative sanctions; misconduct; organizational tolerance.

RESUMO

Objetivo: a opção de celebrar um contrato para bens e serviços tem sido utilizada pelo setor público desde tempos remotos, e, para melhorar a produtividade desses contratos, atores envolvidos têm recorrido a diferentes formas de incentivos. No Brasil, a única forma de incentivo admitida formalmente é a sanção, mas evidências empíricas sugerem que alguns tipos de descumprimento de contratos vêm sendo superados por meio de negociação. Pretende-se identificar quais fatores influenciam a (in)tolerância da administração quanto aos desvios de conduta na execução de contratos/compras governamentais. **Métodos:** foram realizados estudos de casos múltiplos, aplicou-se a reflexividade dos autores (conhecimento de causa) e a lógica abdutiva para a análise de entrevistas com gestores da área, análise de publicações nos diários oficiais, informações da internet e documentos internos, em 14 instituições governamentais. **Resultados:** apresenta-se uma lista de fatores que são (in)toleráveis pela administração na gestão dos contratos/compras e suas razões subjacentes. Como contribuição teórica, este estudo amplia a literatura de administração pública existente ao incluir, de forma inovadora, a teoria da tolerância e o *misconduct* e relacioná-los à gestão de contratos administrativos. **Conclusões:** tendo como preocupação precípua melhorar a produtividade dos contratos administrativos, este estudo esclarece que tolerar pode ser legítimo e oferece medidas que podem ser tomadas para inibir a ocorrência de desvios de conduta nas aquisições e contratações governamentais, a partir das recomendações dos servidores envolvidos na gestão de contratos administrativos. Ainda, uma agenda de pesquisa faz propostas de análises de novos fatores e explicações eventualmente não capturadas neste estudo.

Palavras-chave: administração pública; sanções administrativas; má conduta; tolerância organizacional.

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INTRODUCTION

At first glance, one aspect draws attention to the application of administrative penalties in the Register of Ineligible and Suspended Companies (CEIS, n. d.): disreputability, the most severe sanction applicable to companies that fail to comply with contracts with the administration, is applied to defaulters with significantly different fine amounts. The present study helps understand why the severity scale of sanctions alone cannot explain this divergence.

On the other hand, a less apparent fact (but which can be equally numerous) is the contractual breaches overcome when the parties meet 'around the table' (Almqvist, 2001) to structure the most advantageous agreement to those involved, especially 'regarding prices and deadlines' (Bonelli & Cabral, 2018).

In the context of this study, when non-compliance generates unexpected and sub-optimal results, it will be equated with routine non-compliance. The synonym 'misconduct' will refer to this action throughout this study. For Vaughan (1999), misconduct refers to "acts of commission or omission committed by individuals or groups of individuals acting in their organizational functions that violate internal rules, laws, or administrative regulations in the name of organizational objectives" (p. 288).

The social control agent decrees the violation of what is 'correct' (Greve et al., 2010), which in this study will be public managers. Although they have the authority to penalize misconduct, the results presented by Girth (2014) and Costa (2019) indicate that the demanding nature of the sanctioning process, the use of discretion, and the degree of dependence on the contractor influence the use of flexible ways to resolve flaws in contracts.

Costa (2019) lists these informal actions in contract management as arising from a relationship of trust. Opposing it in some respects, this study considers that some types of informal mechanisms are based on tolerance relationships.

Tolerance has several meanings that can be used in different ways and for different purposes (Verkuyten & Kollar, 2021). According to Doorn (2014), the most common definition of tolerance is accepting things we dislike and disapprove. In addition, according to the researcher, the social processes that lead to (in)tolerance require further studies.

In contractual relations, several theoretical approaches are used to explain the actions of the parties involved, such as transaction cost theory and agency theory. Although agency theory is the most used theoretical model to understand the seller-buyer relationship, theories of misconduct and tolerance can provide additional explanations about the micro-practical aspects of the relationship Costa (2019). For instance, a public manager may relax their control to achieve regulatory objectives and goals or fail to impose a penalty for misconduct (Alsafadi & Altahat, 2022).

In addition, the manager may insinuate the use of rules, policies, and procedures only by formality or signs of compliance, which cover up the true actions (MacLean, 2008). In other situations, the manager may not be able to predict all the circumstances of the environment (Andreoli & Lefkowitz, 2009), given the contract's incomplete nature and potential contingencies (Lima et al., 2020).

To improve the productivity of administrative contracts, other studies have been dedicated to investigating the process of contracting and supervising public procurement, seeking to analyze the relationship between incentives and productivity gains (Lewis & Bajari, 2011), the factors related to the application of sanctions (Girth, 2014; Miller & Whitford, 2006), the accountability of contracts (Girth, 2014), the influence of public and private competences on the costs and quality of contracts (Bonelli & Cabral, 2018), and the educational effect of sanctions (Costa, 2019). However, there was a crossing of the findings of these studies with the underlying structures and processes that lead organizations to tolerate or take stricter measures when misconduct occurs, especially in the context of public administration in Brazil.

Therefore, this article aims to identify which factors influence management's (in)tolerance for misconduct in the execution of government contracts/purchases. This question seems fundamental to unveil the causes and contexts in which these misconducts occur and expand concepts and theories related to misconduct and tolerance within the scope of organizational studies.

This study also sought to expand the existing public administration literature by innovatively including the theory of tolerance and misconduct and relating it to the management of administrative contracts.

Finally, when assuming a new function, a public servant contacts other servants who have already worked in the area and/or other bodies in search of a greater understanding of administrative practices. From this perspective, this study seeks to offer contributions to those interested in managing administrative contracts that face problems (Bispo, 2023; Motta, 2022).

At the end of reading this article, it will be possible to recognize some situations in which a body may declare a company ineligible and others in which organizations that fail to comply with contracts may be tolerated.

CONTEXT AND THE INVESTIGATED REALITY

Government purchases and contracts

Except for the exceptions provided by law, any acquisition of goods and contracting of services signed by the administration must be carried out through a bidding process (Constitution of the Federative Republic of Brazil, 1988; Costa, 2019). The bidding process was regulated by Law No. 8,666 (1993), which established general rules for bids and contracts of the public administration. Although the 'new law' on bids and administrative contracts was sanctioned (Law No. 14,133, 2021), except articles 89 to 108, which have been revoked since 04/01/2021, Law No. 8,666 (1993) also remains in force, as the new law would only enter into force after two years from its publication. However, this period was extended by Provisional Presidential Decree No. 1,167 (2023), and management may choose to use any of the laws until December 30, 2023.

According to Law No. 8,666 (1993), bidding is the administrative procedure by which the public administration bodies, considering the constitutional principles, gather, analyze, and compare the proposals for the supply of goods, works, or services, always choosing the most favorable to the public treasury, within the previously established standards (Costa, 2019). According to Almqvist (2001), this structure adopted in Brazil is the conventional method called competitive tendering.

These procedures are the bidding sector's responsibility to mediate between suppliers and sectors that need purchases, always searching for the most advantageous economic proposal and efficiency (Silva, 2008). To this end, it performs the technical specifications and operational conditions for the demands of materials and services interacting with the demanding sectors. In practice, the management of acquisitions and contracting involves the demanding, bidding, and warehouse or contract management sectors.

Bidding and contracting must be guided by the general principles of administration explicit in the constitution: legality, impersonality, morality, publicity, and efficiency (Bandeira de Melo, 2008), as well as by other principles arising from the political regime that were listed in Law No. 9,784 (1999) (Meirelles, 2000). In addition to constitutional principles, the bidding process must also observe the principles of public interest, administrative probity, equality, planning, transparency, effectiveness, segregation of duties, motivation, binding to the notice, objective judgment, legal certainty, reasonableness, competitiveness, proportionality, speed, economy, and sustainable national development, as well as the provisions of Decree-Law No. 4,657 (1942) (Law No. 14,133, 2021).

According to Fiuza (2009), compliance with the bidding principles is fundamental for the administration to fulfill one of the main public functions: converting public taxes into goods and services for the population. During an administrative contract, those involved are committed to these principles. However, there may be a need for adaptations due to 'unforeseen contingencies in the contract' (Lima et al., 2020) and the 'natural incompleteness of the contracts' (Hart & Moore, 2006). Such adaptations cause the deviation from a pre-established conduct and, therefore, can be considered misconduct. The next topic will explain this term and its relationship to this study.

MISCONDUCT IN PUBLIC ADMINISTRATION

Misconduct, in the organizational context, is a very broad concept without a consensus, because those who study misconduct in and of organizations have not yet offered precise, or even necessarily consistent, definitions (Greve et al., 2010).

For Vaughan (1999), organizational misconduct is defined as "acts of omission or commission committed by individuals or groups of individuals acting in their organizational functions that violate internal rules, laws, or administrative regulations in the name of organizational objectives" (p. 288). In its generic form, the researcher believes that organizational deviation can be understood as a routine nonconformity: a predictable and recurrent product of all socially organized systems.

With this in mind, it is worth reflecting that in Brazil, although public purchases are preceded by tenders, which are intended to give publicity and the possibility of increasingly broad participation, with full control and transparency, and which are, at the same time, efficient (Bandeira de Melo, 2008), it is still expected that the processes will not go as planned, because, as Vaughan (1999) corroborates, "the same characteristics of a system that produces the positive side will regularly provoke the dark side from time to time" (p. 274).

In the context of public procurement, a situation of organizational misconduct occurs when a supplier causes damage to the administration in favor of particular objectives, such as, for example, in cases of delay in delivery, unsatisfactory quality of the good or service, non-compliance with the specifications of the commitment note (Costa, 2019), among others. This behavior by the supplier may occur due to causes beyond its control since the incompleteness of the contract leads to adjustments in activities/supply and costs that were not foreseen at the beginning (Hart & Moore, 2006). On the other hand, pursuing regulatory objectives and goals within any organization can encourage misconduct, especially when the incentives to achieve

these objectives are attractive and control is negligent in imposing penalties for misconduct (Alsafadi & Altahat, 2022). Similarly, suppliers can act opportunistically, seeking their interests and taking advantage of contractual gaps or omissions to the detriment of partners (Williamson, 1985), so the agency problem arises (Eisenhardt, 1989).

In some cases, misconduct by the supplier may also originate, for example, in inspection failures by the administration, which gives rise to opportunities for the supplier to make calculations of the cost-benefit of deviating (Marinho et al., 2018). In addition, the supplier can take advantage of information asymmetry to engage in misconduct since the information it has is not equally available to those who have to control it (Schatterly et al., 2018), the so-called social control agent.

For Greve et al. (2010), the social control agent is responsible for judging when the results of the partners' actions are harmful and, therefore, classifiable as misconduct. Although the literature has identified agents of generic social controls (governments, professional associations), this actor can be defined contextually.

In the relationship of the public administration (principal) with its suppliers of materials and services (agents), it can be considered that the managers of purchases and contracts act as agents of social control, because on behalf of the body they represent, they have the power of the police, to restrict individual private rights to adapt them to the interest of the community (Federal Audit Court [Tribunal de Contas da União, TCU], 2011). It should be noted that, before the application of sanctions, due administrative process must be instituted, respecting the principle of adversary proceedings and ample defense (Law No. 8,666, 1993).

Thus, for this study, the misconduct of public administration suppliers occurs when internal rules, laws, or administrative regulations are violated. These actions are recurrent due to a multitude of structures, processes, and mechanisms that are integral parts of the efficient and effective functioning of organizations (Vaughan, 1999), whose social control agents (national and local government agencies) consider wrong (Greve et al., 2010), and therefore use the power of the police to shape the behavior of the individual (TCU, 2011).

DIAGNOSIS OF THE PROBLEM SITUATION AND/OR OPPORTUNITY

Supervision and monitoring of acquisitions/contracting

The public sector has used the option of entering a contract for goods and services since ancient times (Almqvist, 2001). The main reason is the search for efficiency (Almqvist, 2001; Bonelli & Cabral, 2018; Costa, 2019).

In the methodology adopted in Brazil, public organizations in the role of buyers place potential suppliers in a tender to enter a contract with the supplier (external or internal) that represents the most attractive option according to the previous criteria. Thus, the buyer's responsibility is to manage and control the activity so that the performance and result of the activity are achieved (Almqvist, 2001).

However, the management of contract execution has generated significant accountability challenges that, according to Costa (2019), come from, among other things, the limited rationality (Lambright, 2009) and the complexity of contracts, which allow the divergence of objectives between the principal and the agent who seek to maximize their usefulness (Jensen & Meckling, 1976), generating the so-called agency problems (Arrow, 1963) and, in many cases, transaction costs (Williamson, 1985).

To overcome these problems, some actions are possible, such as threatening to find another partner, demanding a guarantee from the supplier and the contractor offering a bonus (Greve et al., 2010), the use of positive and negative incentives, which, despite not being deterministic, becomes an important mechanism (Girth, 2014); renegotiating the contract and/or absorbing the partner's responsibilities (Hersel et al., 2019) and inspection to avoid these problems and, consequently, guarantee the actual fulfillment of the contract (Costa, 2019). However, in Brazilian public administration, the relationship is based on a contract that provides mandatory supervision and administrative sanctions as the only formal incentive available (Costa, 2019). This incentive is strengthened by Law No. 12,846 (2013), which expands civil and legal persons' civil and administrative liability for the practice of acts against the public administration.

Article 55 of Law No. 8,666 (1993) and article 92 of Law No. 14,133 (2021) define the necessary clauses in every contract and articles 86, 87, and 88 of Law No. 8,666 (1993) and article 156 of Law No. 14,133 (2021) deal with the administrative sanctions applicable for non-compliance with the contractual clauses and/or obligations established in the convening instrument. The penalties provided for the total or partial non-performance of the contract are:

I – warning;

II – fine;

III – impediment to bidding and contracting;

IV – declaration of ineligibility to bid or contract (Law No. 14,133, 2021).

These sanctions are on a scale of severity, and it is up to the administration, valuing the principles of public

administration, to supervise and, when necessary, apply the appropriate legal sanctions. However, empirical evidence suggests that some types of non-compliance with contracts have been overcome by different means, among which tolerance is pointed out.

TOLERANCE AND ITS APPLICATIONS

According to Doorn (2014), tolerance has a paradoxical nature that consists of accepting something rejected or opposed. According to a more modern position on the subject, tolerating consists of appreciating differences, responding positively to diversity, and considering that intolerance is a dogmatism (Verkuyten & Kollar, 2021). Lee (2013) states that, according to empirical research, tolerance can contribute to social stability and harmony.

Doorn (2014) points out that tolerance has been presented as a way to overcome irreconcilable differences between groups in society, and the concept has evolved throughout history and gained new applications to seek political and social stability. Thus, tolerance began to be classified into three types: political, moral, and social (Doorn, 2014).

Political tolerance, according to Vogt (1997), refers to tolerance of "acts in the public sphere, such as making a speech, demonstrating, distributing pamphlets, organizing meetings, and so on" (p. 17). Moral tolerance refers to tolerance of more private acts, for example: "More typically and controversially in recent decades... sexual conduct, such as 'living in sin,' pornography, homosexuality, and abortion" (Vogt, 1997, p. 17). Regarding social tolerance, it is described by Vogt (1997) as the acceptance of "attributed characteristics that people have from birth or acquire in early socialization, such as skin color or language" (p. 17).

What is considered '(in)tolerable' varies over time and context according to political-social transformations (Doorn, 2014). Likewise, studies in the social area that address (in)tolerance also vary and reflect "power struggles and intergroup conflicts in societies" (Doorn, 2014, p. 6). (Social) tolerance is not limited to individualized social relations. It mainly brings together the characteristics of a society or regime. For Gibson (2006), even "most current understandings of tolerance are derived mainly from theories of liberal democracy" (p. 22).

Vogt (1997) concludes that "tolerance involves legal and institutional prohibitions of discrimination, whether they are made by broad constitutional principles that limit government action … or by stricter legislation" (pp. 227-228). As Sullivan et al. (1982) argue, tolerance "implies a commitment to the 'rules of the game' and a willingness to apply them equally" (p. 2). Robinson et al. (2001) warn that tolerance cannot always be considered a global structure since it is sometimes used selectively and circumstantially.

On the other hand, intolerance in the classical sense acts as an understandable and justified threshold for unacceptable dissent ('zero tolerance') (Verkuyten & Kollar, 2021). As Locke (2018) stated, tolerance only has a limit in the reason of the state, which must be intolerable to those who transgress the laws and, therefore, harm the common good.

(In)Tolerance in the public sector

The Brazilian public administration maintains a relationship with its suppliers based on the obligation of inspection and, as the case may be, the application of a penalty, the so-called negative incentives. Despite this, as already observed by some authors (Costa, 2019; Girth, 2014), informal mechanisms were used to manage contracts in the Brazilian public administration. Costa (2019) lists the forms of informal actions in contracts as arising from a relationship of trust. Opposing it in some respects, this study considers that some types of informal mechanisms are based on tolerance relationships.

An essential element of tolerance is difference, so that to have tolerance, the ones who tolerate and those who are tolerated are necessary (Verkuyten & Kollar, 2021). In the context of this study, public and private organizations operate from very different perspectives, starting with their main purposes. While private agents aim at individual profit, public organizations honor their functional commitments when they discover an agreement more favorable to public interests (Schiefler, 2016). Therefore, the contract makes it possible to coordinate the activities of these internally different institutions.

However, within the scope of the administrative contract, supervening facts may occur that entail needs and problems not initially foreseen (Schiefler, 2016), and that will result in irreconcilable differences that can be tolerated. Thus, a contractor who fails to comply with the total/partial contract but has their justification accepted will probably be tolerated. Conversely, when its justification is rejected, the contract is terminated, and the contractor is penalized, it can be said that the contractor has not been tolerated.

Due to tradition, administrative custom, and strict interpretation of the principle of legality, negotiation (tolerance), in these cases, is considered amoral, although there are no prohibitive rules. On the contrary, Laws No. 9,469 (1997) and No. 13,140 (2015) admit the possibility of negotiation to seek more efficient solutions for public interests (Schiefler, 2016).

Although the excessive clauses discourage the negotiation, due to their outlined procedures that mostly lead to contractual termination and application of penalties for non-compliance, the management does not need to waive the defense of the public interest when hearing the contractor. It is possible to create formal conditions for the private agent to present a more reasoned defense, and so that the administration does not feel exempt from its purpose when negotiating.

There is concern about collusion and corruption, but agencies can strive to make all ex-post negotiations transparent (Lima et al., 2020) to allow the traceability of the actions of public agents. In addition, transparency can transform tacit knowledge into explicit knowledge, allowing an agent in the future to have a memory of actions for similar situations.

Verbal negotiations are of concern, which become undue because of the need for registration in a proper document (Bonelli & Cabral, 2018; Costa, 2019; Marinho et al., 2018). The problem is not tolerance but the need for more transparency in the negotiation process. The big issue is to regulate negotiation to creatively find healthy alternatives for public and private interests (Schiefler, 2016).

In this study, the definition of tolerance adopted is related to accepting something that is not under the contract and/or invitation to tender, followed by the classic definition represented in the studies by Doorn (2014) and Verkuyten and Kollar (2021). As it is a question of applying legally prescribed administrative sanctions, the determining factor is non-compliance with the contract and, consequently, with the provisions of Laws No. 8,666 (1993) and No. 14,133 (2021). In cases of non-compliance in which there was any flexibility, tolerance is considered, and non-flexibility is considered intolerance.

METHOD

It was considered essential to listen to the people who manage contracts because the data published in CEIS contains little information, and there is no theorizing on the application of tolerance and misconduct in managing administrative contracts. As a research strategy, the study of multiple cases was used, as the events of the cases are described, which have uniqueness and potential for applicability in similar situations (Yin, 2016).

The abductive logic was adopted for the analysis because, for Dubois and Gadde (2002), the method translates into going to the empirical field to interact with the phenomenon and try to capture the moment and the specific. For this reason, the approach is suitable for studying multiple cases, with theoretical limitations, superficial secondary data, and the fragility of narratives (Vaara et al., 2016). Thus, abduction was configured as a fundamental means for developing the comprehensive path to identify which factors influence the administration's (in) tolerance of misconduct in the execution of government contracts/purchases.

The field of research was the Brazilian public administration. This covers the direct and indirect administration of the Union, the states, the Federal District, the municipalities, autarchies, and entities with legal personality under private law under the control of the government and foundations established or maintained by it. The public sector is composed of several types of government agencies and entities (for example, city halls, educational institutions, prosecutors' offices, state governments, ministries, and secretariats) with similar administrative structures and responsibilities but with different powers (executive, legislative, and judicial) and spheres (federal, municipal, and state plus the Federal District).

The public administration has been applying the same penalties for different fines to contractors who fail to comply with contracts/purchases. On the other hand, a less apparent but equally numerous fact is the breaches of contracts that are tolerated (Bonelli & Cabral, 2018; Costa, 2019). It is observed that this phenomenon has yet to be studied based on the theory of tolerance and misconduct.

Fourteen bodies were chosen for convenience, out of a total of 472, on the condition that they had in common a registration with CEIS, the application of a sanction of declaration of ineligibility (Law No. 8,666, 1993; Law No. 14,133, 2021) to the contractor. To delimit the time, the sanctions applied in the last five years were separated. Despite applying the most severe form of penalty, in many situations, these bodies need to negotiate with companies that, intentionally or not, violated the contract and/or convening instrument in favor of their organizational objectives.

It was decided to seek the agencies with the greatest expressiveness in the number of records of sanctions occurrences. We also sought the diversity of spheres of government and geographic regions, combined with the possibility of access, according to Table 1. As this is a study with an abductive method, the most significant concern was to seek variation between cases (Dubois & Gadde, 2002). Thus, when the dialogues became repetitive, the collection of information with people was interrupted, which occurred in the 14th researched body.

Table 1. Cases details.

Case	Number of registrations (CEIS)	Sphere	State	Region
1	1	Municipal	Rondônia	North
2	14	Municipal	São Paulo	Southeast
3	6	Municipal	Santa Catarina	South
4	7	Municipal	Paraná	South
5	13	Federal	Federal District	Midwest
6	6	Federal	Federal District	Midwest
7	3	Federal	Bahia	Northeast
8	5	State	Mato Grosso	Midwest
9	9	State	Federal District	Midwest
10	7	State	Rio Grande do Sul	South
11	3	State	Espírito Santo	Southeast
12	2	Municipal	Rondônia	North
13	4	Municipal	Minas Gerais	Southeast
14	1	Municipal	Pará	North

Note. The sequence of interviews orders the cases. We sought to include bodies domiciled in the five regions of the country and the three spheres (federal, state, and municipal). The criterion used to select the bodies was the CEIS record of a supplier being declared ineligible.

The database used to reach the cases of interest was the CEIS (n. d.). Applying the clipping of the last five years (from 06/22/2016 to 06/21/2021), we arrived at the cases of this study. In addition to (step 1) interviews with contract managers of public bodies, (step 2) data from publications in official gazettes, (step 3) information from the internet, and (step 4) documents from the bodies themselves (contracts, minutes, notifications, justifications, letters, and others) were collected. The triangulation of data sources makes it possible to compare and cross-reference data, thus evaluating the consistency of information from different sources at different times. The triangulation technique allows the researcher to explore several facets of the phenomenon studied and has been one of the most used methods to ensure validity in research (Olson et al., 2016).

Due to geographical issues and social distancing rules due to the COVID-19 pandemic, the researchers used the telephone number obtained from the website to identify the person responsible for managing and inspecting contracts (the reference sector in the subject) and to schedule the interviews. Interviews were conducted using Google Meet, Microsoft Teams, and phone meeting software. While one researcher phoned the participants, the other ones recorded the audio. The average time of the interviews was 28 minutes, held in June and July 2021, and transcribed immediately after their occurrence.

Simultaneously with the data collection in the interviews, the cases and their relationship with the available theories and norms were analyzed. This stage was favored by the reflexivity of the researchers (Bispo, 2023), who shared the experience of the study participants, which was important for constructing the relationships of the meaning of the narrative fragments.

To avoid any embarrassment and limitations in the interviewees' discourse, they were informed before starting the interview that they and their organs would not be identified. In addition, the interviewers started the questions by stating that the situations are like those in the agencies where they work. The aim was to put the interviewee at ease and allow them to give frank descriptions (Ozcan & Eisenhardt, 2009).

To avoid bias by researchers, this study used only two open-ended questions and a few key terms. The first question is related to non-compliance with contracts and/or convening instruments where, instead of applying what 'is written,' the public body seeks negotiation and tolerance instead of immediate application of sanctions. From this, the interviewers conducted the interviews, addressing issues related to the situations in which these negotiations occur, what is considered, and the causes and reasons for making the decisions.

The second question is a description of intolerable factors and conditions, the occurrence of which would result in the most severe form of liability for the contracted company, a declaration of ineligibility. Based on this question, the interviewers conducted the discussions seeking to address points that evidenced the conduct that is inadmissible on the part of the management and its related reasons/causes.

When the interview became circular, especially about the first question, some key terms (essential material/support,

previous/current budget year, internal/external pressure) were used to encourage descriptions of situations. For example, if the interviewee repeatedly stated that every violation resulted in the application of a penalty, reflective frames were offered with the question: "If the material is essential and the removal of the company will directly affect the service, how do you correct the absence of the material or service?"

Furthermore, during the interviews, we sought cases and examples of specific phenomena that the interviewees could report, that is, situations in which there was negotiation regarding breach of contract or where there was no flexibility on the part of the administration.

He focused on current norms and theories of tolerance and misconduct to keep track of what to collect in the empirical field. Based on the dialogues, the laws and documents analyzed, the information on the internet (triangulation), and the knowledge of the researchers (reflexivity), it is considered that the method is adequate and allows important insights, which will be detailed in the following section.

ANALYSIS OF THE PROBLEM SITUATION AND PROPOSALS FOR INNOVATION/ INTERVENTION/RECOMMENDATION

Based on the individual histories of the bodies, including interview data, official journals, internet publications, laws, and regulations, these data were triangulated, emphasizing themes present in the different data collection methods that also emerged throughout the interviews. Initially, the cases were analyzed, seeking similar constructions and themes (Ozcan & Eisenhardt, 2009). Some initial relationships were found, and these relationships were refined, following the logic of replication, constantly using each case to compare and verify the occurrence of other relationships and logics not identified in the first analysis. Two researchers reviewed the data to form views that were then synthesized.

Tolerable factors in the bidding framework

It was explicit in the cases studied that there was no penalty in some situations of non-compliance with the administrative contract, as the contractor presented proof that justified the extension of the delivery period, the alteration of some characteristic of the good/service, or a friendly termination. The management's tolerance in these cases is supported by compliance with the constitutional principles of ample defense and contradiction, provided for in the bidding framework (Law No. 8,666, 1993; Law No. 14,133, 2021), which protects the contractor from arbitrariness.

For example, observing the non-compliance, the interviewees reported that the body sends notifications and requests documents proving the occurrence of justifiable facts. According to the interviewee in case 2, these situations are common, and, after notifications and adjustments, they can hardly comply with contractual obligations.

Such findings are reaffirmed in different studies (Costa, 2019; Girth, 2014) and found when analyzing some internal documents of the studied bodies, where it is verified the occurrence of this negotiation between the parties. This formalization is important so there is transparency in the 'ex-post negotiation' process (Lima et al., 2020), complying with the basic principles of public administration.

The search for a resolution to the impasse can be considered a way to respond positively to diversity (Verkuyten & Kollar, 2021), due to the occurrence of problems not initially foreseen (Schiefler, 2016), as every contract is naturally incomplete (Hart & Moore, 2006).

Tolerable factors in sparse laws

The factors tolerated by the administration are not all gathered in Law No. 8,666 (1993). Some principles can be found in sparse laws, such as the principle of efficiency, provided for in Law No. 9,784 (1999) (regulates the administrative process within the scope of the federal public administration) and in the new legal framework for bidding (Law No. 14,133, 2021).

According to Silva (2008), efficiency in public bidding is the simultaneous observation of economy, speed, and quality. For the author, a delay may be faster than the opening of a new process. He also points out that every bidding process incurs costs (personnel, resources, publications, and others), and it is up to the contract manager to assess whether the price adjustment is consistent, whether the specifications offer a satisfactory performance standard, and whether the extension of the deadline is more advantageous than the opening of a new bidding process.

As an example, the interviewee in case 7 explained that the application of penalties occurred infrequently. Therefore, in order not to run out of the material and/or interrupt some planned activity, "we make every attempt to solve; receive the material or service so as not to lose ... Applying the penalty and losing the supply means running out of material." Still on the subject of tolerable factors in sparse laws, cases 8, 9, 10, 11, and 13 raise the issue of how the COVID-19 pandemic has aggravated the situation of contractors, who have started to decline price registration bids. In this scenario, there were decreases in the production of goods and services in several sectors, which justified the joint effort of the parties involved to guarantee the interests and needs of all (Lima et al., 2020).

This context required the management to be more willing to negotiate, that is, to 'endure' some previously

irreconcilable situations (Doorn, 2014). In addition, when the material or service is not urgent (case 1), has minimal penalty values (cases 7 and 8), and there is only one supplier (cases 8 and 11), the interviewees reported that they are more tolerant, whose support for acceptance is not in the bidding laws.

Another verified situation addressed the principle of the quality of the public budget. According to the interviewee in case 6, in the case of commitments from another budget year, the administration is more tolerant: "... there isn't, that's it, then you'll have to insist on the guy even for him to deliver ... this material then the guy insists until the end, more until the end, we're already turning the semester, and the guy doesn't deliver." In this case, the factors not supported by specific laws make the negotiations more informal; consequently, the public manager needs to be more secure about admitting tolerance to contractual breaches. Therefore, the degree of transparency in the negotiation process is lower than in factors foreseen in the bidding framework or sparse laws.

Intolerable factors in the bidding framework

The intolerable factors also stem from issues specific to the bidding framework and sparse laws. Laws No. 8,666 and No. 14,133 (2021) establish a series of infractions that, if the contractor commits, may give rise to several sanctions, with the declaration of ineligible being considered the most serious. The analysis of the data (especially the publications in the Official Gazette and information from the interviews) revealed that government agencies and entities do not tolerate and apply this sanction to contractors who cause damage to the administration (frustrate a complex bidding process and/or prevent the holding of an event), have defrauded the tax authorities or commit illegal acts.

For example, the interviewee in case 14 reported that the contractor presented the invoice and, after making the payment, the contractor canceled the invoice to be free of tax collection. The interviewee in case 12 exemplifies the situation of purchasing medicines: "We need this, we have a consumption schedule, this is missing from our hospital, we have to buy outside, we have to buy in another way, so it is generating costs, time. We contacted the supplier, 'I'm sending it, I'll send it,' what happened, the contractor is not worried. As this is a life risk and the secretary is aware of it, he asks that the penalty be applied, several companies have been declared ineligible for these reasons."

These are serious failings, the first being fraud and the second being that the contractor's misconduct puts the health of society at risk, two situations that are considered intolerable because they "transgress the laws and therefore harm the common good" (Locke, 2018, p. 126). In the second case, there is a total breach of contract, which makes the applicability of the penalty necessary and impossible to tolerate. Although the bidding framework has not previously described all the hypotheses in which the declaration is applicable, it is understood that such sanctions can be applied in the case of behavior typified as crimes, which are provided for in other legal systems.

Intolerable factors in sparse laws

As for the intolerable acts practiced by contractors that are not provided for in the bidding law, interviewees in cases 5, 6, and 11 reported that the administration does not tolerate the violation of labor obligations in the outsourcing of labor, because they can be held subsidiarily if, knowing the facts, they fail to correct them (Marinho et al., 2018).

It was also found in the analysis of internal documents and the interviews that falsifying documents (cases 2 and 3) and acting in bad faith led to intolerance on the part of the administration. Although not expressed in Laws No. 8,666 (1993) and No. 14,133 (2021), these situations can be supported by Law No. 12,846 (2013) and have criminal aspects and there can be no flexibility concerning this, because no principle of the public administration contributes to this type of conduct, according to the interviewees.

Concerning cases of bad faith, the interviewees in cases 13 and 14 described that there are companies taking part in the bidding process that are unable to fulfill their obligations, because from the very first requests they claim that they are unable to deliver the material or they request price adjustments, but they don't provide any supporting evidence. When the body informs that due to non-compliance, it will open the penalty process, some of the suppliers carry out the delivery and those who do not regularize the situation are penalized. For example: "There was a situation where the supplier won the bidding process. When the secretary went to ask for the material, the contractor said that he was unable to deliver it because he needed a certain requirement from her supplier to be able to buy this item, that is to say, he would have had to have seen it before participating in the bidding process. This company was penalized, what worries this infraction a lot is precisely that, the company causes any kind of damage to the body or tries to circumvent the process; participating, offering, or bidding for a certain product or service that it does not have the conditions or ability to comply with" (case 13).

Figure 1 shows the findings reported by public officials supported by current legislation and the unexpected situations by theoretical references addressed in this study.

	Bidding framework (Laws No. 8,666/1993 and No. 14,133/2021)	Sparse laws (CF/1988, Laws No. 9,784/1999, No. 12.846/2013, and Precedent No. 331/TST)
Tolerable	Ample defense and contradictory	Interruption of service Internal/external pressures Low-value fines Exclusive supplier Budget year Essentiality of the material Context
Intolerable	Losses to management Tax fraud Collusion	Non-compliance with labor obligations Document falsification Bad faith

Figure 1. Matrix of (in)tolerable factors in administrative hiring.
(In)tolerable factors respect legal provisions. However, some fundamentals are not found in Law No. 8,666 (1993).

As noted, (in)tolerable factors provided for in the bidding framework or sparse laws emerged and tolerating did not mean dispensing with the public interest but acting based on other constitutional principles that are explicit and implicit in the bidding law itself or other laws of the Brazilian legal system.

All the cases studied showed varying levels of tolerance. According to Schiefler (2016), there is no point in prohibiting it because negotiations will always take place; moreover, prohibition in these cases carries severe risks of distorting administrative conduct. There needs to be a cultural change so that negotiation becomes an instrument of efficiency in the management of administrative contracts, and transparency is linked to decision-making (Lima et al., 2020). Thus, it is safer to regulate the negotiation process to be transparent and better in the public interest.

Inhibitory measures of misconduct

This topic is beyond the objectives of the study. However, it is important to highlight because the interviewees approached them spontaneously. They are proactive measures to inhibit the actions of the contracted companies so that they do not violate the contracts. This advice can serve as a guideline for different bodies and is easy to implement, with the advantage that it can be used simultaneously due to the synergic effect of the practices.

The most common recommendation pointed out by almost all respondents is immediate notification. This concern may arise from the culture of registration of all actions that reflect compliance with the determination of article 67, paragraph 1 of Law No. 8,666 (1993) and article 117, paragraph 1 of Law No. 14,133 (2021). Case 12, for example, states that this attitude aims to prevent the 'culture of procrastination' and recommends the training of servants to create a culture of adequately dealing with deviations in the conduct of contractors. Case 2 describes the following situation: "During the bidding process, if the company presents a price much lower, there must be a thorough process, and the company is requested to present justification accompanied by a cost spreadsheet and balance sheet." Law No. 8,666 (1993) allows the performance of due diligence aimed at clarifying the instruction of the process.

Still dealing with the recommendations, cases 6 and 13 reported that when they realize that the contractor will 'require attention or effort,' they already open a new bidding process. For the correct supplier, it is appropriate to grant positive incentives, such as extending the term or renewing the contract (Costa, 2019). Still, the defaulting supplier is responsible for renegotiating the contract (Hersel et al., 2019) and carrying out sanctions (Costa, 2019).

Cases 8 and 12 state that the correct payment helps the body have legitimacy to make the contractual requirements. This is consistent with Bandeira de Melo's (2008) concern when highlighting the role of the Fiscal Responsibility Law, which imposes on the state the duty to pay for the purchases and services it contracts since in the past, managers made debts that they could not pay.

Case 13, as Costa (2019) suggested, recommends a well-developed term of reference that can avoid problems, that is, reduce the need for sanctions. In service situations, the details may provide for the dynamic integration of public and private agents' processes to overcome the contract's incompleteness and produce better results (Bonelli & Cabral, 2018; Costa, 2019).

Cases 13 and 14 suggest that only well-founded and documented justifications be accepted. Based on Silva (2008), the manager must evaluate cost spreadsheets and purchase invoices that prove that there was a significant

increase in costs in cases of request for price realignment or decline of the minutes.

Summarizing the interviewees' reports of the cases surveyed, the following measures can be recommended to inhibit the occurrence of misconduct in acquisitions and hiring:

1. Immediately notify any sign of non-compliance by the contracting party.
2. Request documents that substantiate all justifications and allegations of the contractor.
3. Comply with the contracting party's obligations, especially about payment within the established deadlines.
4. Guide and train the servants involved in the inspection of the contract.
5. Take preventive action against the offer of unfeasible prices (far below the market standard or with no profit margin) by bidders.
6. Anticipate the possibility of interruption of supply or service and draw up a plan B (start a new event).

These measures that emerged in the interviews with contract managers bring a practical view of how the public administration can act preventively and avoid the occurrence of misconduct, corroborating the literature that deals with factors that should be considered in the application of incentives (Lewis & Bajari, 2011) and the search for accountability of contracts (such as Girth, 2014). This convergence with the literature occurs mainly in the sense of being attentive to signs of non-compliance and acting by notifying, requesting documents, and justifications, among others.

In addition, the synthesis of measures to inhibit the occurrence of misconduct in acquisitions and contracting, based on administrative practice, expands the existing literature, as it can be considered a novelty for the sector. These measures bring together aspects that, in addition to observing the inspection and control of the contractor/supplier, assume that the manager is also responsible for training himself and his team and seeking to comply with his minimum obligations, such as not delaying payments for services.

CONCLUSIONS AND TECHNOLOGICAL/SOCIAL CONTRIBUTION

This research is oriented to those interested in understanding and solving problems in administrative contracts (Motta, 2022), since the factors that influence the (in)tolerance of the administration regarding misconduct in the execution of government contracts/purchases were identified.

To achieve this purpose, a multiple case study was carried out in 14 public bodies through interviews with contract managers and complemented with additional data to identify the relations of administrative practice with the legal provisions and theoretical perspectives that supported the analysis.

The results of this study reflect the factors considered tolerable and intolerable. A widespread and unexpected practice was tolerance of non-compliance with contracts since the principle of legality is the most popular among constitutional principles; therefore, it is used as the guiding principle of the public administration's performance.

Likewise, there is a general idea that penalties are always gradual and proportional to the financial losses and the importance of the services not performed. However, daily, it appears that the type of transgression committed has greater weight for the choice of penalty, to the detriment of monetary values, since, in the Brazilian public administration, in general, the fine is a fee about the contract's total value. Therefore, contractors who defraud the bidding process may obtain more minor fines and a more serious penalty, such as the declaration of ineligibility.

The contribution of this study lies in expanding the public administration literature, including, in an innovative way, the theory of tolerance and misconduct and relating it to the management of administrative contracts. It was identified that specific duties of the public servants involved in contract management are compatible with the responsibilities of social control agents.

In terms of methodological contribution, the use of the database CEIS (n. d.) for the misconduct study and the classification of factors that influence the administration's (in)tolerance as supported by a bidding framework and sparse laws can also be considered unprecedented, according to the survey carried out for the study.

Thus, this study contributes theoretically and methodologically to the advancement of organizational studies, in addition to contributing practically to professionals who deal with the application of sanctions within the scope of the public administration, helping them carry out better and more transparent work, supported by constitutional principles and other laws, expanding their horizons beyond the law of bids and contracts, as life is not restricted to general rules. In addition, it provides measures that can be taken to inhibit the occurrence of misconduct in government procurement and contracting.

This study does not answer all the questions that involve the research of (in)tolerance to misconduct in the execution of government contracts/purchases, nor is it able to capture all the possible factors that lead the administration to this (in)tolerance. Nevertheless, the analysis proposed and carried out here introduces factors explained in the database CEIS (n. d.), the experience of the interviewed public servants involved in contract management, and those identified in the studies of authors in the field of public administration.

New studies can deepen analyses by addressing a single case study, seeking to uncover new factors and even deeper explanations or longitudinal research to capture variations over time and context (e.g., across different governments during and after the COVID-19 pandemic).

New investigations can also explore subjective issues present in the agencies' judgments and explain why deviation from similar conduct is penalized with different severities. Misconduct researchers can compare whether indirect entities and autarchies apply for fewer declarations of ineligible than direct management bodies. It is also possible to explore the social aspects that influence organizational decisions and the cognitive behavior of decision-makers.

In this study on administrative contracts, it was observed that the servants are, for the most part, resistant to admitting that they did not follow the bidding framework, but it was found that they, when facing difficulties in the execution of these contracts, use other principles to achieve the organization's objectives, which can ensure an equally legitimate position in the management of public affairs.

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1st author: conceptualization (equal), data curation (equal), formal analysis (equal), funding acquisition (equal), investigation (equal), methodology (equal), project administration (equal), resources (equal), software (equal), supervision (equal), validation (equal), visualization (equal), writing – original draft (equal), writing – review & editing (equal).

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Data Availability

The authors claim that all data used in the research have been made publicly available through the Harvard Dataverse platform and can be accessed at:

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