The making of the “Lei n. 14.133/2021” statute and its initial challenges

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Abstract: The article examines the challenges in the transition to new statute (“Lei n. 14.133/2021”), a regulatory framework aimed at modernizing Brazilian public management by promoting efficiency, flexibility, and quality in public procurement. It explores the limitations of the previous legislation, the process of drafting the new statute, and the obstacles encountered during its implementation, such as resistance from managers, debates over regulatory detail, and the persistence of the lowest-price criterion. Through a critical approach, it discusses the role of various institutional actors in overcoming cultural and structural barriers to build a Public Administration more attuned to contemporary demands.

Keywords: administrative law; constitucional law; law making procedure; administrative contracts.

1. Introduction

Without an administrative contract, public administration cannot function. In an institutional structure such as Brazil's, in which the Constitution made a series of promises that the State would act

to promote improvements for the population, the study and improvement of public contracts becomes essential.

Brazilian public administration faces challenges related to the modernization and efficiency of its processes, especially in the field of public tenders and administrative contracts. It is no exaggeration to say that these problems were diagnosed in the early years of the 1988 Constitution and Lei n. 8,666/1993. Although the old law survived the administrative reform of the 1990s, its instruments proved insufficient to deal with the growing complexity and dynamism of contemporary social and economic demands. In fact, the advent of Lei n. 14,133/2021 represents a regulatory milestone that seeks to reposition the Brazilian State towards a more modern, agile and efficient public administration.

The new statute (Law on Public Procurement and Contracts) introduces a series of regulatory innovations that aim to break with outdated practices. Its proposal is to simplify procedures, increase the discretionary power of public administrators and value judgment criteria that go beyond the mere search for the lowest price. However, the transition to this new regulatory model has not been without setbacks. Cultural, structural and institutional resistance has hindered the full implementation of the legislation, creating an environment of uncertainty and debate about the effectiveness of the changes introduced.

This paper aims to analyze the main aspects that marked the creation and first years of validity of Lei n. 14,133/2021. The first chapter examines the legislative transition, with an emphasis on the dichotomy created by the Constitution and the practical and philosophical inadequacy of Lei n. 8,666/1993. The second chapter addresses the legislative process that gave rise to the new law, but with a focus on the reformist movement that sought to redesign public administration by granting more autonomy to managers, abandoning attachment to formalism, and fostering a more efficient and less bureaucratic administrative culture. The third chapter analyzes three concrete challenges faced in the implementation of the new law: (i) resistance to its full validity, often motivated by lack of technical knowledge and fear of punishment by oversight bodies; (ii) the debate on the detailing of its provisions and its impact on the autonomy of subnational entities; and (iii) the continuation of practices focused on the search for the lowest price, to the detriment of the quality of public contracts.

By articulating these three axes, the article seeks to understand why the new statute was enacted and how the transition to the new legal regime is going.

More than a simple normative analysis of the provisions of the law or a point-by-point description of the events of the legislative process, this article proposes a debate on the role of Brazilian administrative culture in the implementation of structural changes. It offers a critical debate on the roles played in the implementation of the new law by the various institutional actors, from the Legislative Branch in drafting the law, through its application within the Executive Branch, to oversight by the courts of auditors and the Judiciary Branch. Ultimately, the aim is to understand how these elements interact and what cultural and structural obstacles need to be overcome for Lei n. 14,133/2021 to achieve its transformative potential.

By articulating the legislative, administrative and control dimensions, this work seeks to contribute to the deepening of the study on the Brazilian public procurement system and provoke reflections on the paths to building a more efficient public administration aligned with current demands.

2. The boiling point of the dichotomy between formalism and results

The 1988 Constitution is the result of a confluence of historical, political, philosophical, institutional and social factors that led to an ecosystem in which people called for the improvement of the country. The mobilization of civil society and the political convergence towards democratic consensus created a new state order committed to promoting social well-being by guaranteeing individual, social, political, economic and cultural rights.

For this reason, the constitutional text incorporated historical demands for equality, dignity and social justice by presenting a broad and ambitious list of fundamental rights and guarantees. Education, health, housing, work and environmental protection are just some of the rights that must be ensured by the State's actions. This constitutional promise has its origins in a programmatic conception, in which the Constitution not only establishes organizational rules, but also projects a public power that guarantees rights and promotes structural transformations. In fact, the constituent was generous with public policies and with the requirements that administrative activity be supported by the fundamental objective of offering the population broad access to quality services.

At the same time, however, the democratic transition was concerned with the abuses that occurred under the previous regime and created strict control mechanisms over all stages of state activity. This severity can be observed in different spheres, such as administrative control, legislative control, judicial control and, above all, the control exercised by the audit courts. While on the one hand these additional layers of supervision ensure the good management of public resources, on the other hand they impose a series of mechanisms that can hinder the execution of strategic projects.

Thus, it is revealed that the wide range of rights and improvements provided for in the Constitution contrasted with the rigidity of the control systems established for the actions of public authorities. The Constitution "imposed the challenge of consolidating Brazilian democracy by encouraging citizen participation and increasing the porosity of the State in defining and fulfilling its functions, in an institutional environment marked by an authoritarian and paternalistic tradition, along with multiple social divisions" (Vilhena, 2010).

A scenario of constant dichotomy has been created in Brazilian public administration: how can we guarantee what is provided for in the Constitution without failing to comply with strictly regulated procedures and control requirements?

In practice, this often results in two problematic scenarios: excessive concern with formal compliance with procedures, which often paralyzes public administration and delays the delivery of essential public policies; and legal uncertainty generated by doubts in the interpretation of the law and the activism of control bodies, which have created an environment of uncertainty for public managers, who often avoid making decisions for fear of sanctions.

Informed by this dilemma, Lei n. 8,666/1993 was enacted at the dawn of the Constitution to regulate public bidding processes and contracts in Brazil. Like all laws, the recently repealed law is a product of its time, that is, of the first five years of the new constitutional order – a period in which institutions were still learning to deal with the dichotomy between rigid formal procedures and the need to implement quality public policies. This chronology has relevant implications for understanding the nature of the aforementioned law, which sought to implement the constitutional principles of legality, equality and efficiency, but nevertheless reflected the bureaucratic vision that prevailed at that historical moment, marked by rigid procedural formalism.

In reality, Law 8,666/1993 responded to the growing distrust regarding the State's ability to ensure fairness in public procurement (Alves, 2017, p. 530), and thus chose to consolidate a legal structure that prioritized formal control over speed and adaptability in public procurement. The text of the law then detailed in detail the steps necessary to conduct bidding processes, from the opening of the bidding process to its award and contract execution. Similarly, the law reinforced external and internal control over administrative contracts, integrating the culture of detailed oversight that permeated Brazilian public administration. These characteristics expanded the space for the expansion of the role of oversight bodies and imposed challenges on public administration, such as increased legal uncertainty for managers dealing with complex or atypical situations.

That is, the approach adopted by Law 8,666/1993 sought to prevent fraud and embezzlement, an objective aligned with the post-dictatorship political context, in which transparency and administrative morality were central demands. However, procedural rigidity brought with it the risk of making processes excessively slow and hindering the implementation of agile public policies adapted to the needs of society. Because it was designed to curb abuse, the law contributed to pushing the dichotomy of the 1988 Constitution toward formalism, since, while programmatic rights required quick and innovative responses, the procedural framework of the law imposed a slower and strictly controlled pace on public administration.

In this context, it is important to emphasize that Lei n. 8,666/1993 was enacted two years before the introduction of the Master Plan for the Reform of the State Apparatus in 1995, which established the pillars of the so-called management reform in Brazil. This important milestone in Brazilian public administration had the effect of pulling the pendulum towards public policies in search of achieving results-based management, more focused on efficiency, results and flexibility in administrative practices (Bresser-Pereira, 1996, p. 10). In effect, the law became emblematic of the bureaucratic model that would be questioned and combated by managerialist logic.

The tension between the change in the paradigm of the Administration and the obsolescence of Lei n. 8.666/1993 became evident in situations that demanded agility, such as economic crises and emergencies, in which the rigid rules of the law made it difficult for the State to respond quickly. For this reason, since the management reform, the public procurement system has been modified: (i) by numerous partial modifications to the text of the law; (ii) by interpretations by the Judiciary and the courts of auditors; (iii) by creative regulation of provisions of the law; and (iv) by the enactment of scattered laws, such as the one on the auction (Lei n. 10.520/2002) and the one on the Differentiated Regime of Public Contracts (Lei n. 12.462/2011). Regrettably, the regulatory fragmentation resulting from dozens of legal changes, oscillating judicial and regulatory decisions and the proliferation of sub-legal regulations has snowballed into an increasingly complex, costly and insecure system.

Thus, the application of Lei n. 8,666/1993 over three decades has revealed significant practical limitations. Finally, the combination of adherence to formalism and the complexity, burdensomeness and insecurity of the regulatory framework has generated an administrative avalanche: the paralysis of administrative decisions and the inefficiency in delivering results to society. This reality is marked by what can be called the dogma of procedure over results, a practice that prioritizes strict compliance with formal rules to the detriment of efficiency and public purpose.

For many public managers, the success of a contract was exclusively linked to compliance with procedural rules, even if the result did not serve the public interest (Anastasia, 2022). This love of formalism, the result of a culture of fear regarding the sanctions imposed for possible procedural errors, contributes to the phenomenon known as the “pen blackout”. In this scenario, managers

refrain from making decisions, preferring to wait for detailed guidelines or, in extreme cases, judicial authorization to act. As well summarized by the Argentine jurist Roberto Dromi, in his ironic description of the Failure Code: “art. 1: you cannot; art. 2: in case of doubt, refrain; art. 3: if it is urgent, wait; art. 4: it is always more prudent to do nothing” (Dromi, 1995, p. 35).

This mentality clearly highlights the incompatibility between the conception of Lei n. 8,666/1993 and contemporary reality. The lack of balance between control and decision-making autonomy has led to the proliferation of the figure of the infantilized manager, who, fearful of the consequences of his actions, prefers to remain inert. For this reason, the final stage of the “Era 8,666” was characterized by: (i) the population’s dissatisfaction with essential works and services that were frequently delayed or interrupted due to the reluctance of managers to approve stages or deal with contractual unforeseen events; and (ii) the Administration’s complacency, waiting for the comfort of a court decision that would authorize the manager to do something, order what to do, and/or, as a last resort, determine how to do it. Given this scenario, the need for legislative modernization became unavoidable.

3. Law making process beyond procedure: the philosophical conception of the new statute

More than the procedural sequence and the procedural discussions, the legislative process that gave rise to the new statute was marked by philosophical issues that informed its development. Based on the recognition of the unfeasibility of maintaining the system that prioritized formalism over results, a reformist movement emerged that stood out in the 54th and 55th legislatures of the National Congress, whose actions went beyond simply changing the rules for public tenders and administrative contracts in Brazil.

The initial turning point for this transformation can be identified in Lei n. 13,129/2015, which modified Lei n. 9,307/1996, which regulates arbitration in Brazil. The inclusion of the public sector in the arbitration regime illustrated that the public interest can be compatible with flexibility in the search for efficient solutions. This advance represented a milestone in admitting that the Administration could adopt more dynamic and effective instruments, as long as they observed constitutional principles.

The recognition that the unavailability of the public interest cannot be seen as a dogma was the basis for a series of broader legislative reforms, which are intrinsically related to the reformulation of the regulatory framework for public tenders and administrative contracts. The fruits of this legislative effort are: Lei n. 13,303/2016 (State-Owned Companies Law), which introduced new rules for public companies and mixed-capital companies; Lei n. 13,655/2018 (which modified the Law of Introduction to the Rules of Brazilian Law; Legal Certainty Law), which recognized the importance of good faith, adequate motivation and predictability as pillars for efficient public management; and the reform of the Administrative Misconduct Law (Lei n. 14,230/2021), which restricted punishments to situations characterized by intent, bad faith or fraud.

These legislative changes were based on the recognition that public administration was facing a decision-making paralysis, often attributed to public managers' fear of incurring disproportionate sanctions. The new paradigm began to place greater trust in public managers, providing them with tools and autonomy to plan, implement and execute public policies.

In this sense, Lei n. 14,133/2021 reflects a change in mindset: the focus has shifted from merely formally complying with rules to results-oriented action, with more freedom for the agent to design, undertake and execute administrative contracts. For this reason, reforming the legal framework for public procurement was not just a matter of technical adjustments; there was a symbolic need for a new law to consolidate the new public management model. Although many provisions are inspired by pre-existing laws, the difference lies in its logical structure, which prioritizes planning and results. Its conception complements a philosophical change in the understanding of public administration, through which the aim is to adopt a more flexible and results-oriented regime.

In fact, the enactment of the new statute marks more than just a regulatory change: it symbolizes the beginning of a new era in Brazilian public procurement. Excessive punitiveness is out, and qualified irregularities are in, while bureaucratic constraints are in, and proactive public administrators are incentivized. This transformation will be essential to foster trust in public administrators and ensure that public contracts are effective instruments for implementing public policies, improving social well-being, and promoting national development.

However, full implementation of the law will require not only the adoption of new administrative procedures, but also a comprehensive cultural change capable of transforming the dynamics between the public administration and the oversight bodies. For the new law to achieve its objectives, it is essential that there is a joint and coordinated effort to align administrative practices, such as oversight activities, with the expectations of the public interest.

In this context, Lei n. 14,133/2021 follows the principled line of its sister law, the Legal Security Law, by incorporating a stance of tolerance for errors that are not serious, nor qualified by bad faith or intent. This intentional direction has the immediate objective of breaking with decision-making paralysis and disproportionate punishments and has as an intermediate goal a cultural change: tolerance for errors must be accompanied by a joint effort between public administration and external control. It is up to both to build an environment of mutual trust that, on the one hand, requires administrators to work more elaborately, to thoroughly analyze the circumstances and to be robust in the motivation of their actions, but which, on the other hand, modifies the role of the supervisor in complex and uncertain contexts, inviting them to collaborate in the cycle of public policies (Pereira, 2015). In other words, it is essential that control bodies also adapt to this reality, adjusting their role in order to move from a predominantly sanctioning stance to a more collaborative and guiding role.

By acting as allies in the development and implementation of public policies, oversight bodies can not only prevent irregularities but also foster good practices and support administrative efficiency (Sundfeld, 2021). This change in role strengthens the State's ability to serve the public interest, by recognizing that public management must be assessed based on its good faith and commitment to results, and not just on strict adherence to formalities – which are precisely the philosophical foundations of the new legislative framework.

Furthermore, one of the central pillars of Lei n. 14,133/2021 is the appreciation of planning as an essential element of administrative activity. Planning is not just about fulfilling a formality but rather creating conditions so that public managers can make well-founded decisions, based on the reality of the facts and adjusted to concrete circumstances (Corrêa, 2007).

For public managers, planning is a tool that allows them to anticipate risks, forecast necessary resources and align objectives with expected results (Anastasia, 2006). In practice, however, managers often face situations of unpredictability, an overload of demands and budgetary

limitations. The new statute – once again demonstrating that it has the same DNA as the Law on Legal Security – recognizes this reality by giving planning a central role, encouraging it to be realistic, adaptable and pragmatic, rather than merely formal and bureaucratic.

Effective planning requires a constant focus on the facts and circumstances surrounding each specific situation. The new law encourages managers to consider in their decisions: economic, social and regional conditions that may influence the execution of the contract; technical feasibility; projected costs and benefits; and the identification and mitigation of risks, both for the Administration and for contractors.

This is because, although necessary, the integration between planning and budgeting is not sufficient to achieve the desired results in the context of public policies. Planning the macro vision provided by the budgetary documents was important in the first steps of the consolidation of the administrative reform (Corrêa, 2007), but now we are looking for a step in the direction of the micro, and this can only happen if planning reaches the administrative contracts.

Planning within the scope of administrative contracts represents one of the most important frontiers to be crossed for the modernization of public administration. It is through administrative contracts that the State enables the provision of public services and the implementation of public policies demanded by society, and this is the central instrument that connects the needs of the population to the concrete actions of the Administration. The lack of adequate planning compromises not only the efficiency of these contracts, but also the State's ability to meet social demands with quality and speed.

Furthermore, by establishing planning as an essential part of bidding processes, the new law promotes greater legal certainty. Decisions made based on well-prepared preliminary studies, such as annual procurement plans, gain strength and legitimacy, reducing the risk of questioning by regulatory agencies. The successful execution of administrative contracts depends on robust preliminary studies, feasibility analyses and ongoing monitoring. Crossing this line means prioritizing a State that thinks before acting, ensuring greater legal certainty, efficiency in the allocation of resources and more satisfactory results for the population. Proper planning allows for greater practical adaptation, aligning public procurement with the real needs of the Administration and the availability of resources.

Therefore, the cultural change required to implement the new law involves closer ties and cooperation between administration and control. While planning provides greater predictability and efficiency to administrative actions, control bodies must act as guiding partners, rather than merely punitive inspectors. In other words, audit courts must prioritize technical support, analysis of good faith and understanding of the practical limits faced by managers. This interaction is essential to consolidate a public administration that values the merit of decisions and recognizes the weight of the specific circumstances in which they were made.

Although it is too early to make a diagnosis, the first years of Lei n. 14,133/2021 demonstrate that it will not be easy to achieve the idealized rupture in the legislative process.

4. The first years of the new statute

The concrete application of Lei n. 14,133/2021, in its early years, faced significant challenges, which reflect both the cultural and structural barriers of the Brazilian public administration and the advances that the new legislation seeks to achieve. The main problems identified stand out:

resistance to the full validity of the new law, the debate over its federal nature and the extreme attachment to the lowest price.

4.1 Resistance to full implementation: lack of knowledge and fear of punishment

The first and most obvious challenge was the resistance of public managers to the entry into force of the new law. This resistance has its roots in two main factors: the lack of technical knowledge about the changes introduced and the fear of punishment resulting from errors in the use of the new rules.

The law breaks with ingrained practices and introduces tools that require a new perspective on planning, management and control. However, the fear of facing the rigor of the control bodies prevents many managers from embracing the new possibilities. This administrative paralysis is nothing new in Brazil, where the culture of formalism has been used as a shield to avoid actions for fear of punishment. In practice, many managers would prefer to follow the old, safer model, even if it is less efficient and less suited to contemporary demands.

In anticipation of this, the National Congress granted a two-year transition period so that everyone could adapt to the new legislation. During this period, managers who considered themselves capable of using the instruments of the new statute could do so, while those who felt insecure could continue to promote contracts under the rules of Lei n. 8,666/1993.

However, resistance to the new law was even greater. On March 31, 2023, just before the two-year mark of the new law, a Provisional Measure extended the transition period until the end of 2023. The extension was definitively adopted by Complementary Lei n. 198/2023, and, with that, those who resisted the change would have nine more months of use of the previous laws.

In parallel with this debate, Opinion 6/2022, of the National Chamber of Tenders and Administrative Contracts of the Attorney General's Office, proposed normative guidance to the effect that the manager could express interest in promoting the contracting through Lei n. 8,666/1993, still in the internal phase, and that, if this were done, the bidding process would be governed by the previous law, even if it had ended its validity:

> The legal expression 'option to bid or contract', for the purposes of defining the legal act established as a reference for the application of the ultra-activity of the previous legislation, must be the manifestation by the competent authority, still in the preparatory phase, that expressly opts for the application of the previous bidding regime (Lei n. 8,666/1993, Lei n. 10,520/2002 and Lei n. 12,462/2011). (Brazil, 2023)

The opinion was the subject of debate at the Federal Court of Auditors (TCU), which decided to use the publication of the notice as a milestone to define the moment at which hiring could still be carried out under the old laws:

> 9.21. bidding processes and direct contracting processes in which there was a “choice to bid or contract” under the old regime (Lei n. 8,666/1993, Lei n. 10,520/2002 and arts. 1 to 47-A of Lei n. 12,462/2011) up to March 31, 2023, may have their procedures continued based on previous legislation, provided that the publication of the Notice materialized by December 31, 2023;
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> 9.22. processes that do not comply with the guidelines established in the previous subitem must exclusively observe the commands contained in Lei n. 14,133/2021;
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> 9.23. the legal expression “option to bid or contract” includes the manifestation by the competent authority that expressly opts for the application of the previous bidding regime (Lei n. 8,666/1993, Lei n. 10,520/2002 and Lei n. 12,462/2011), still in the internal phase, in an administrative process already instituted. (Brazil, 2023)

Through this decision, the TCU established an interpretation of the new law that understands the fears of managers, but also recognizes the work of the National Congress, which promoted the reform of the contracting system. This can be inferred from the vote of Minister Augusto Nardes, rapporteur of the case, who acknowledged that "it is natural that there is a certain fear of using new things. However, this phase will only be overcome with the practical use of the new law" but stressed the need to prevent the "possibility of some public bodies and entities continuing to use the old bidding laws for an indefinite period, which would end up 'perpetuating' the use of Lei n. 8,666/1993" (Brasil, 2023).

4.2 National or federal law: between detail and innovation

During the legislative process, there was debate about possible violations of the jurisdiction of states, municipalities and the Federal District, but consensus was reached with the demand of the subnational entities themselves for a more detailed text. This movement was driven by the search for the comfort that the drafts of the Attorney General's Office provide to local managers. The result was a law that seems more national than federal, with almost two hundred articles, many of which reproduce excerpts from Federal Executive Branch[1] sub-legal regulations and Federal Court of Auditors judgments.[2]

Although the detailed system provides a robust regulatory framework, it also poses risks to creativity and innovation in public administration. Previous experiences, such as the emergence of accreditation in Minas Gerais, show how local approaches can contribute to effective solutions that are eventually incorporated into the national system. Excessive uniformity, however, can stifle these initiatives.

The solution lies in encouraging managers to explore the possibilities opened up by the new law. Many provisions require local regulation, and it is in this space that good practices and reasonable experiments will flourish. Creativity should not be seen by external control as a deviation, but as a way to improve the efficiency and effectiveness of public procurement.

4.3 The extreme adherence to the lowest price

The persistent use of the lowest price criterion in public procurement represents a significant obstacle. The new law authorizes the use of other judgment criteria, such as technique and price, best technique or artistic content, as long as they are appropriate to the purpose of the contract. However, managers and control bodies often hesitate to use these alternatives, prioritizing the lowest price criterion, even when it is not the most advantageous for the Administration. This resistance stems from a reductionist view of public finances, which prioritizes minimum spending over long-term cost-benefit. Although the law offers managers the possibility of motivating choices based on qualitative criteria, oversight agencies require that the quantitative criterion always be considered.

This does not only occur when defining criteria for assessing the best proposal. An emblematic example is the interpretation of art. 59 of Lei n. 14,133/2021, which was designed to simplify the criteria for disqualifying proposals in the judgment phase. The article provides for five distinct hypotheses, including proposals with unfeasible prices (item III) and proposals whose feasibility has

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1 For example, the provisions of the new statute on the Price Registration System largely mirror Decree No. 9,488/2018.

2 For example, the provisions on risk matrix (Judgment no. 1,510/2013 – Plenary), imposition of planning practices, risk management and better governance in public procurement (Judgment no. 2,622/201 – Plenary), among others (Zymler et al., 2021).

not been demonstrated (item IV). In addition, the provision establishes an objective criterion for the unfeasible price, that is, when the values are less than 75% of the budgeted value (§ 4) and makes an exception for carrying out due diligence to assess the feasibility of proposals, when this has not been demonstrated (§ 2). In other words, in the case of item IV, there is a fixed criterion, with no room for discussion, and in the case of item III, a subjective analysis is possible.

However, some misinterpretations have created more bureaucratic obstacles, contradicting the original intention of the legislator. An understanding has emerged, even accepted in judgments of the Federal Court of Auditors (Brazil, 2024b), to the effect that, even when the objective criterion established by law is exceeded, it is possible to carry out due diligence to demonstrate the feasibility of the proposal:

> The criterion defined in art. 59, § 4, of Lei n. 14,133/2021 leads to a relative presumption of unenforceability of prices, and it is possible for the Administration to grant the bidder the opportunity to demonstrate the feasibility of its proposal, under the terms of art. 59, § 2, of the aforementioned law. (Brazil, 2024)

This phenomenon is not new in the Brazilian legal system and reflects a culture of litigation and questioning of clear and objective rules. The objective criterion was established because the legislator understood that, in this case, the amount to be spent is not the most relevant. It was understood that if a contractor offers a discount greater than 25% of the budgeted price, his proposal should be disqualified by a legal presumption that if the planning established an adequate financial guideline, such a discrepant amount would compromise the execution and would not serve the public interest.

This "fetish" for the lowest price undermines the application of Lei n. 14,133/2021 and harms bidding processes by including new stages of unnecessary due diligence in the legislator's view. This bureaucratization of the procedure is precisely what the new law sought to avoid. The text introduced an objective, easy-to-understand criterion that determined that agents should proceed with the bidding process in search of the best proposal, even if this was not the least costly financially.

4.4 A new public management environment

The challenges identified reveal the complexity of the transition to the new bidding and contracting regime. Despite the difficulties, Lai No. 14,133/2021 brings a unique opportunity to modernize public administration, promoting greater efficiency, flexibility and innovation.

For this to happen, it is essential that the control bodies understand the new legal environment and act in consensus with the Administration, ensuring security for managers and promoting the application of good practices. Defending good managers, reducing unnecessary litigation and combating "complaining frenzy" are essential to achieving a balance between control and efficiency.

The new law symbolizes the possibility of burying the legal uncertainty that has paralyzed the Administration for decades, giving managers the ability to identify, motivate and implement solutions with confidence and responsibility. This is a cultural change that requires joint effort and promises transformative results for the Brazilian public sector.

5. Conclusions

The article sought to understand the reasons for the enactment of the new statute by understanding the main aspects that marked the creation and first years of validity of Lei n. 14,133/ 2021.

In the first chapter, the historical evolution and challenges of Lei n. 8,666/1993 were analyzed, in the context of the 1988 Constitution and Brazilian public administration.

It was concluded that: (i) the Constitution established a difficult balance between the promotion of programmatic rights and strict control of state activities, which directly impacted the implementation of public policies; (ii) Lei n. 8,666/1993 prioritized formalism and fraud prevention, but made processes bureaucratic, slow and incapable of responding quickly to contemporary social demands; (iii) partial changes and scattered laws created a confusing and insecure system for public managers, making it difficult to implement effective public policies; (iv) the emphasis on compliance with formal procedures generated a paralyzed administration and the infantilization of managers, who avoid making relevant decisions; (v) the obsolescence of Lei n. 8,666/1993 highlighted the urgency of a new regulatory framework, capable of balancing control, efficiency and decision-making autonomy, responding to the demands of a more dynamic public administration aligned with contemporary challenges.

In the second chapter, the legislative reform movement that gave rise to the new statute was investigated.

It was concluded that: (i) the new law symbolizes a philosophical transformation in Brazilian public administration, through a break with formalism and punitivism, promoting public management based on results, planning and flexibility; (ii) the text provides tools for managers to act with greater autonomy, as long as they comply with constitutional principles, mitigating the fear of disproportionate sanctions; (iii) planning becomes an essential tool for informed decisions adjusted to practical realities; (iv) collaboration between administration and control bodies is essential for legal certainty, and (iv.i) these should act in a more guiding and less punitive manner, with the aim of improving public policies; (v) although the objectives are ambitious, a cultural change is an indispensable condition for the implementation of the new law.

In the third chapter, three challenges faced in the initial implementation of Lei n. 14,133/2021 were examined: (i) resistance to the full validity of the new law; (ii) the national or federal nature of the law; and (iii) insistence on the lowest price criterion.

It was concluded that: (ii) many managers resisted adopting the new law due to lack of technical knowledge and fear of punishment; (i.ii) the culture of formalism perpetuates administrative paralysis, leading managers to prefer the old models; (i.iii) the extension of the transition period reflects this resistance, but the Federal Court of Auditors managed to avoid the perpetual use of the old legislation; (ii.i) the new law was structured in detail to meet the demand of subnational entities for greater legal certainty; (ii.ii) although detailing facilitates application, it can also restrict creativity and innovation; (ii.iii) encouraging local regulation and experimentation is necessary to balance uniformity and innovation; (iii.i) although the new law allows for more complex and qualitative criteria, the preference for the lowest price persists, and this generates less advantageous decisions in the long term; (iii.ii) mistaken interpretations of art. 59 of the law bureaucratizes processes by contradicting the original intention of simplification; (iii.iii) automatic adherence to the lowest price reflects a reductionist view that harms the effectiveness of public procurement.

Ultimately, the 1988 Constitution, with its duality between programmatic ambition and procedural rigor, is a work that reflects both the dreams and the challenges of a country in search of social justice.

Lei n. 14,133/2021 offers a unique opportunity to modernize public management, promoting efficiency, flexibility, and innovation. To this end, it is essential that oversighted bodies understand

and respect the new regime, supporting managers with legal certainty and reducing unnecessary litigation. Only with this balance will it be possible to overcome decision-making paralysis and transform the contracting model into an effective development tool.

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