The Contractor's Responsibility and the Perspective of the Outsourced Service Providers of the Federal Institute Minas Gerais - campus Ouro Preto: influences that can affect the quality of the service provided

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Abstract— The use of outsourced labor appeared in the Brazilian Public Administration in the mid-1950s aiming at the gain with the quality of the processes, the possibility of reducing costs and increasing productivity. It has intensified since 1990, particularly in federal universities via public bidding. In order to manage or supervise a contract, specific knowledge in different areas should be required, in addition to an adequate profile, whose skills and competences are not always observed when they are appointed, since the quality of the inspection of contracting passes through your hands. The present study sought to identify the extent to which the contract inspector's commitment interferes with the conduct of service providers. The research methodology is quantitative and of an applied nature, with exploratory objectives, experimental and bibliographic procedures, developed within the scope of the Federal Institute Minas Gerais - campus Ouro Preto, with outsourced service providers. Questionnaires and statistical notes were used as a means of data collection. From the results, it will be possible to develop an action plan with improvements and solutions applicable to the local reality, in addition to replication in other institutions where the Contractor operates. Theoretically, three topics were covered: outsourcing and relevant legislation; the function of the supervisor of outsourced service contracts; and management by competence.

I. INTRODUCTION

Public organizations have long been thought as a company within the scope of administration and, as such, have adapted mechanisms from the business sector to promote efficiency and quality in the provision of services to society. This research for new practices to improve performance inevitably goes through the outsourcing process, in which the use of specific labor is opted for, however, the contracting organization is directly disconnected from the service provider.

It should be noted that outsourcing cannot be understood as a service purchase relationship, where one company acquires service from another. It consists of a structured form of organization, where the exchange of
information, coordination and credibility on either side becomes essential.

The legal basis for the outsourcing process finds a framework in Law No. 8666/1993, that regulates article 37, item XXI, of the Federal Constitution and establishes rules for bidding and contracts of Public Administration and other measures, among which the power to inspect the outsourced service in order to require continuous, quality, punctual and efficient consideration, as well as, in Decree No. 9507/2018, articles 10 and 11.

For that, the legislation itself in its article 67 determines that: “The performance of the contract must be monitored and inspected by a specially designated representative Administration [...]” [1]. Such inspection is given by the figure of the manager and the inspector of the contract.

It is noteworthy that the manager or the inspector of the contract, is a specially designated person, and is not entitled to deny it, because it is the primary function to the public servant and for the fulfillment of the contract, having as a parameter the result provided in the bidding documents, it must have a proactive and preventive behavior, enforcing the rules provided for in the contractual instrument [2]

However, for the organization to identify such competencies and abilities in order to promote a good choice of manager or inspector, it is necessary to make use of Knowledge Management instruments, which are not always part of Public Administration.

Furthermore, as it is an activity that does not add any pecuniary or meritocratic advantage to the inspector, on the contrary, being treated by the vast majority as a nuisance that no one wants, it is relevant to highlight the responsibilities of the inspector and the vision of outsourced service providers who are object to inspection, in order to reveal difficulties and victories of those who are predisposed to do so, before the community in which it is inserted

II. HEADINGS

2.1 OUTSOURCING IN PUBLIC ADMINISTRATION

Outsourcing in the Public Administration of Brazil began in the 1950s, through the implementation by the federal government of the Goals Plan, whose objective was to accelerate economic growth through industrial expansion. Still in the middle of 1967, the Brazilian government issued Decree No. 200/67 that determined the decentralization or indirect execution of operational activities, by means of a contract with qualified companies, whose purpose brought in article 10, paragraph 7 was to “prevent disproportionate growth of the administrative machine” [3]. This outsourcing should be complied with under specific conditions.

Subsequently, outsourcing received support from the Federal Constitution of 1988, through article 37, item XXI, in which, in which it admitted, from then on, the contracting of services by the Public Administration outsourced by conducting the bidding, however, it was only with the regulation of the bidding process, which occurred under Law No. 8666/93 and later, from 1995, with President Fernando Henrique Cardoso and the creation of the Ministry of Federal Administration and State Reform, that outsourcing exploded.

In mid-2018, the government of President Michel Temer, through Decree No. 9507/2018, promoted new amendments to Law No. 8666/1993, giving it a more updated character to the existing realities in Public Administration.

Conceptually, Giosa [4] defines the term Outsourcing as “a management process through which some activities are passed on to third parties - with whom a partnership relationship is established - the company being concentrated only on tasks essentially linked to the business in which it operates”.

In Kinczeski's [5] conception, the outsourcing is the contracting of services through an intermediary company, that is, the contractor transfers to a third party the execution of services that could be performed directly, through a service provision contract.

It can be said that outsourcing is contracting, through a bidding process by specialized companies that will carry out activities not directly linked to the main activity of Public Administration. Impersonality, autonomy and the eventuality of the service provided are presented as differences between employment relationships and outsourcing relationships.

Even though the outsourcing process is legal, it is not intended for all areas and activities. The limitations imposed by law direct the outsourcing process to the service activities of conservation, cleaning, security, surveillance, transport, information technology, catering service, reception, reprography, telecommunications, maintenance of buildings, equipment and facilities.

The outsourcing process presupposes the existence of a planning from the moment it is defined by its use, a monitoring of its implementation and mainly the management during the contracted period, since there is, until then, no clear measurements of the benefits previously mentioned (cost savings, level of quality of services provided).
It is enumerated as advantages that outsourcing is justified by reducing the cost of the Public Administration, increasing competitiveness, better quality of the contracted service. However, many of the disastrous and fruitless experiences for organizations in relation to outsourcing are the result of organizational immaturity.

The possibility of labor and social security defaults, non-qualification of the contracted company, companies whose capacity to comply with the proposal is unworkable, poor quality of the execution of the contracted activities stands out as negative points to outsourcing.

Due to the negative points previously presented, Marinho et al. [6] justifies: "... these factors lead to reflect on the need to develop and maintain an efficient contract management policy, based on variables that satisfy and meet the dynamism currently required from the public sector".

In this sense, Law No. 8666/93, presents in its text, article 67, states that "The execution of the contract must be monitored and inspected by a specially designated representative of the Administration [...]" [1], consequently, when entering into a service provision contract, the Administration is vested with the power-duty to inspect the service in order to require a general, permanent, regular and efficient provision.

In Almeida's [7] observation: "when he mentions that the management and inspection of outsourced services is a true Achilles' heel of the public administration in Brazil, causing good bids and contracts to be rarely lost due to the interference of outsourcing'.

Then comes the figure of the inspector, a servant designated to verify the ideal contractual execution, ensuring that public resources are being used and minimizing the risks inherent to outsourcing.

2.2 THE CONTRACT INSPECTOR

The manager or inspector of the contracts is the servant on the part of the Public Administration, formally appointed by the expenditure originator, who will monitor the contractual execution. Such designation shall be part of the contractual instrument, emphasizing that the choice must fall on those who have greater technical experience related to the object of the contract. The indication of who will assume this responsibility, on the part of the primary originator, must occur in the internal phase of the bidding process, that is, prior to the choice of the company that will provide the service.

Since Law No. 8666/93 dealt briefly with the issue of monitoring and inspecting contracts and its profile of this figure, the Ministry of Planning, Budget and Management was responsible for its regulation, through the publication of Normative Instruction 02/2008, of April 30, 2008 and subsequent amendments. The Normative Instruction tries to guide the inspection practices by setting parameters and procedures for the agents involved through articles 31 to article 35.

It is worth mentioning that some agencies differentiate the agents in charge of the inspection, dividing them into managers and inspectors, although this practice does not apply to all bodies of Public Administration, with the responsibility of a single employee, the attribution of all activities.

For information, according to the Manual of Management and Outsourcing Services Contract Supervision of Enap [8], we have the following attributions:

CONTRACT MANAGER: server formally appointed by the Internal Management Directorate to monitor and coordinate the activities of the inspectors and receive the service definitively (act that concretizes the certificate), after analyzing the reports presented by the technical and administrative inspection. It is also responsible for the initial or preparatory procedures, in order to forward to the contracts sector the acts related to: extensions, alterations, rebalancing, payments, possible sanctions and termination of the contract.

CONTRACT TECHNICAL INSPECTOR: server appointed by the Demanding Services Area, formally appointed by the Internal Management Directorate, to monitor and supervise the execution of outsourced services, confer the compliance and quality of the services provided, performing the provisional receipt of services;

ADMINISTRATIVE INSPECTOR: servant formally appointed by the Internal Management Directorate to monitor the execution of outsourced services, with regard to the monitoring of the contractor's compliance with labor, social security and tax obligations, as well as provisionally receive the service.

Activities such as contract inspector suggest initial meetings with the contractor in order to define technical issues; the intensive inspection of the contractual length monthly on a daily basis; measuring monthly results; analysis and storage of contractual history; promotions of contractual adjustments with a view to collective agreements or legal impositions, application of sanctions when detecting irregularities, extensions and terminations of the contract within the stipulated period. It
is attributed to the contract inspector, according to article 16, paragraph 2 of Law No. 8443/1992 the joint liability of the supervisor to the contractor's acts for possible damages, caused by the irregular execution of the contract.

Exposed some activities, it is noticed that for the full exercise of the function, the inspectors of outsourced service contract must have knowledge in different areas, such as technician on the contracted object, tax legislation, labor, social security, bidding, budgeting, accounting, applications related to people management, among others.

In addition to this knowledge, it is important to highlight some desirable skills to the profile of the public servant in order to better manage the processes where the outsourced service provider is necessary.

It would be certain to conclude that for a management in its full conception and to require the servant assigned to the inspection to comply with the entire list of attributions that are pertinent to it, there would be a concern with the adequacy of the inspector's profile, the development of individual and specific skills, as well as technical training, in addition to a structure that could give it adequate working conditions for the good practice of contract inspection and, mainly, valuing the activity and the professional who performs it.

In the case of detection of deficiencies and technical limitations, and of a profile that may prevent diligent fulfillment of the exercise of their assignments, the main manager of the administration should, first, provide the qualification of the server for the performance of the assignments, according to the nature and complexity of the object, as well as using knowledge management tools in order to enhance the knowledge of the professionals, or, in the impossibility of such procedures, designate another servant with the required qualification.

However, in most cases, almost none of this occurs. What has been seen are unprepared inspectors, with no autonomy of action, overloaded with assignments, since in addition to the inspector activity, the civil servant still accumulates the daily attributions of his area of activity since it is a legal imposition, there being no possibility negative, as it is a legal order.

2.3 KNOWLEDGE MANAGEMENT

All the changes that the Public Administration has experienced over the last 20 decades, go directly through the mental map of civil servants. Today it is necessary for the public servant to have a more holistic view, ceasing to be a specialist and becoming a generalist, with multiple knowledge in economics, public finance, public accounting, controllership, strategic planning, information and communication technology, among others, in addition to remain in a constant process of training and acceptance of the new rules.

Knowledge management and competence management in terms of results in the public spheres, even if difficult to measure, are extremely relevant, although the processes derived from the use of these theories are not yet fully inserted in most public institutions, according to Carbone et al. [9], due to their complexities.

The discussion about knowledge is not a new fact. Maturana; Varela [10] point out in the Bible, references on the theme: “When Adam and Eve ate the fruit of the knowledge of good and evil, they found themselves transformed into other beings and never returned to the old innocence [...] they knew it if naked, they knew they knew”.

Passing through the Celtic civilization, who credited immortality, knowledge and knowledge to the apple, we arrived in Ancient Greece, from where one of the first definitions of knowledge came from Plato justified true belief. Over the centuries other authors have tried in vain to define knowledge. From the 1920s, Carbone [9], argued that knowledge is a relationship between subject and object, where through knowledge it apprehends the object and, at the same time, the object conditions the subject who apprehends it. At the end of the 20th century, Plato's definition comes back to the fore, now brought by Nonaka and Takeuchi [11] for the construction of the theory of knowledge creation, consequently becoming, in the first reference to what we now know as Knowledge Management Theory: We are what we do.

The resource-based theory originates from the work of the English economist Penrose [12] who emphasizes the limits and possibilities of firms' internal resources to generate market imbalance, from which companies can obtain competitive advantages.

For Cherman; Rocha-Pinto [13] knowledge is still a little valued resource within organizations and, therefore, unable to promote valuation of strategic innovation results or individuals' performance.

This theory explains the difference in performance between companies based on heterogeneity and their resources. This means that the basic source for competitive advantage is the resources and skills developed and controlled by organizations, that is, the valorization of professional knowledge, scarce, valuable elements, difficult and costly to imitate and replace, according to Barney (1991 apud CARBONE, [9]).

Managerial knowledge and the ability to learn in organizations have come to be considered engines of strategic change, that is, in the long term, the sustaining of
competitive advantage has come to depend on a superior (managerial) ability to identify, build and leverage new competencies, consequently making the ability to learn a critical strategic variable to the success of an organization.

The Public Administration has recently assumed the field of competences and positive results have been observed in effectiveness, since there is concomitant clarity of rules, clear and comprehensive communication with civil servants, in addition to tailored training and development processes.

However, this process is still timid and involves, mainly, the change in the profile of the high-level leaders of organizations, which in many cases is seen with their hands tied, since politics is something intrinsic to public organizations.

Competence, meritocracy, appropriate profile for the activity are still taboos, but they need to be incorporated in order to be able to extract from public servants, their best behaviors towards society, especially when they are in functions aimed at inspection, as is the case of server designated as contract inspector, consequently taking into account the constitutional principle of transparency, the principle of fiscal management, corroborating the dual efficiency and effectiveness in public administration.

III. RESEARCH METHODOLOGY

For this work, we opted for quantitative and applied research, with exploratory objectives, whose procedures will be experimental and bibliographic, to be developed within the scope of the Instituto Federal de Minas Gerais - campus Ouro Preto (Federal Institute of Minas Gerais – campus Ouro Preto), with the outsourced service providers of the Companhia ADCON – Administração e Conservação Eireli1 (ADCON Company - Administration and Conservation Eireli).

In the opinion of Hernandez Sampieri et al. [14]:

The quantitative approach uses data collection to test hypotheses, based on numerical measurement and statistical analysis to establish standards and prove theories.

It uses data collections without numerical measurement to discover or improve research questions in the interpretation process.

With the quantitative research, the aim is to generalize the results found in a segment group (sample) to a larger community (population) and still allow the studies carried out to be replicated. It is important to remember that quantitative research occurs in the external reality of the individual, which leads us to an explanation of how reality is understood through this research approach.

The research is also of an applied nature, which according to Gerhardt; Silveira [15] aims to generate knowledge for application in practice, addressing the solution of specific problems and involving local truths and interests.

Regarding the objectives, it is an explanatory research. According to Gil [16], explanatory research is concerned with identifying factors that determine or contribute to the occurrence of certain phenomena, therefore, it explains the reason for things through the results it offers to the researcher.

The procedures to be developed use experimental and bibliographic research. In Gil’s perception [16], experimental research consists of determining a study objective, selecting variables that would be able to influence it, defining ways to control and observe the effects that the variables are capable of produce on the object.

Within the population context, the research was conducted with 88 service providers that make up the framework of the Companhia ADCON, gathered to the Instituto Federal de Minas Gerais - campus Ouro Preto.

The formula described below, whose accepted reliability index is 95%, was used to calculate the sample.

\[
\begin{align*}
    n &= \frac{Z^2 \times p \times (1 - p)}{d^2}
\end{align*}
\]

\( Z = \) level of confidence according to the standard normal distribution (95% confidence level)
\( p = \) estimated proportion of the population that presented the attributes in the research
\( 1 - p = \) (estimated proportion of the population that have not presented the attributes in the research)
\( d = \) tolerated margin of error
\( n = \) sample size

The resources of the Microsoft Office Excel application were used to tabulate the data collected in the interviews. From the collection, treatment and

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3 Eireli: Acronym designate for Individual Limited Liability Company. It is a type of company that is formed by a single partner, that is, by the entrepreneur himself who wants to open a business and be the sole owner and whose regulation was given by Law No. 12441/11.
compilation of the data, an attempt was made to diagnose the current situation.

IV. RESULTS AND DISCUSSION

The studies took place at the Instituto Federal de Minas Gerais - campus Ouro Preto, created by determination of Law No. 11,892 of December 29, 2008, as part of the policy of expanding professional education in Brazil, originating from the Escola Técnica de Ouro Preto (Federal Technical School of Ouro Preto), a 77 year old institution, together with the company hired to provide outsourced services, Companhia ADCON - Administração e Conservação Eireli, a company with patriarchal roots in Minas Gerais and present in the market since 2001.

Currently, the contract has 88 outsourced service providers at various stations: conservation, cleaning, surveillance, transport, information technology, catering service, reception, maintenance of buildings, equipment and facilities.

Following the adopted methodology, 88 questionnaires were delivered by print or electronically to service providers, of which 63 questionnaires returned, which points to 71.6% of responses. Since the confidence interval adopted was 95%, which represents about 71.75 responses, it is believed to have achieved the proposed objectives of sampling and reliability.

Of the 63 interviewees, only 1 claimed not to know the contract inspector. And with regard to the knowledge of the functions pertaining to the inspector, 60.31% stated that they know little about the contract inspector’s function and know what he does, while 33.33% claimed to know the function and know what he does. Only 4.76% did not know how to give their opinion and 1.58% of the interviewees said they were totally unaware of the function of the contract inspector.

Data source: Research result, 2021.

However, when asked directly about some of the activities belonging to the contract inspector (Graphic 1) only 6.34% pointed out all the activities described in the questionnaire as being the function of the inspector, while most of the interviewees shared their opinions in relation to the other activities, which demonstrates that, although the outsourced service providers are aware of the activities developed, they do not have sufficient knowledge about the activity developed.

It corroborates with this affirmative the answers presented for the question about how the service provider sees the inspector, where the majority (71.42%) understand the contract inspector as someone who represents both the Contracting Institution (Instituto Federal de Minas Gerais - campus Ouro Preto) and the Contracted Institution (Companhia ADCON). It is necessary to mention that no outsourced service provider claimed to see the inspector as someone who charges for the frequency and quality of service, which is one of the activities to be developed by the same (Graphic 2). It also shows that part of the interviewees (19.04 %) believes that it is up to the inspector to represent only the Instituto Federal de Minas Gerais - campus Ouro Preto.

When questioned about having already sought the contract inspector at some point (Graphic 3), it can be seen that the majority (58.73%) claims to have never sought it and, conversely, 41.26% of service providers claim to have already sought the contract inspector at some point.

Asking about the possibility of seeking the inspector when there is a doubt to solve it, the outsourced service providers showed a balance of behavior (Graphic 4). Most claim never to seek and a slightly lower margin,
claiming that they have none problem with looking for the inspector to solve your problems. Within this approach, a very small portion reported that even if they feel embarrassed, they look for the inspector or ask a colleague to help them resolve their doubts with the inspector.

*Graphic 4 - Behavior of outsourced service providers in relation to doubts.*

Source: The author, 2021.

When approached about the freedom they feel to ask their questions to the inspector (Graphic 5), the majority of respondents answered that they always feel attended by the inspector and a small minority stated that they were not free to ask questions or do not know how to give an opinion on the subject.

*Graphic 5 - Feeling of freedom of outsourced service providers to ask questions to the contract inspector.*

Source: The author, 2021.

Questioned about the sensation of having their performance in their activities interfered by the contract inspector, a balance is perceived between the views, with the majority (42.85%) believing that the inspector never interfered in their activities (Graphic 6) and a slightly smaller portion (34.9%), say they are unable to answer the question. Among those who claim that there is interference by the inspector in their activities, even if sporadically, there is a percentage of 20.63.

*Graphic 6 - View of outsourced service regarding possible interferences of the contract inspector.*

Source: The author, 2021.

The identification of the feelings caused by the contract inspector in outsourced service providers can be seen in Graphic 7, was divided into negative feelings (anguish, fear and repulsion) and positive feelings (security, decision/resolution and confidence). A separate analysis of each sentiment made it possible to ascertain that, with regard to the feeling, there is a balance between service providers who say they are indifferent and those who consider the feeling of anguish very low in relation to the contract inspector. In the same way they behaved in relation to the sensation of fear, having a balance between a very low sensation and indifference. Following the same line, the feeling of repulsion for the contract inspector.

*Graphic 7 - Perception of the feelings of outsourced service providers regarding the behavior of the contract inspector.*

Source: The author, 2021.

It is still possible to infer that for the positive sensations (Graphic 7) the preponderance between the feeling that the contract inspector transmits a very strong or strong security is imperative. The same interpretation is given when the feeling is the power of decision/resolution and the feeling of confidence.

Regarding the pandemic period experienced by society (Graphic 8 and Graphic 9), most of the interviewees pointed out that they had not undergone any change in the performance of the contract inspector, nor did they perceive changes either positive or negative in the inspector's behavior of the contract inspector.

*Graphic 8 - Positioning of outsourced service providers in relation to the perception of the contract inspector’s performance or not during the pandemic.*

Source: The author, 2021.
When giving a score for the performance of the contract inspector (Graphic 10), the majority inferred the maximum score, and only 4 of the interviewees rated the inspector's behavior as a minimum.

For a better understanding of the results, correlations were made between some questions. The negative feelings caused to those who said they had never sought the inspector were analyzed, and the feeling of indifference prevailed and, subsequently, the very low feelings, when the feelings of anguish, fear and repulsion prevailed (Graphic 11). Such behavior denotes two possibilities of analysis. First, the allegation of indifference actually hides a fear of seeking the inspector, where by not assuming a position, it would avoid future problems. Second, the non-demand for the inspector comes from personal characteristics or other feelings not questioned in the research.

With regard to positive feelings (Graphic 12) among those who said they had sought the contract inspector, it was possible to ascertain that the majority claims to have very strong or strong feelings. For those who have never sought the contract inspector, surprisingly, the percentage of interviewees who claimed to feel security, decision/resolution and confidence represents the majority. Hence it can be inferred that even though they did not need the assistance of the inspector at some point, they feel represented and protected by the inspector's performance.

For the correction between the positive feelings and the maximum score, it is noticed that the service providers highlight the feeling of security (Graphic 13), being strong and very strong for most. The same can be extended to the feelings of decision/resolution and confidence, with the strong option of feeling is predominant.

When the data of the negative feelings promoted by the contract inspector and the score for the performance are correlated, it is noticed that among those who gave the maximum score to the inspector, the number of people who expressed anguish indifferently is equal to the number of people who claim to have the feeling of anguish very low. Still in relation to the maximum score, what draws the most attention is the interpretation that the feeling of fear is very low (Graphic 14), followed by the feeling of being indifferent. As for the maximum score regarding the
feeling of repulsion, there is a balance between indifference and the feeling being very low. It is noteworthy that in all feelings aroused, the percentage was very low if occurrence.

Graph 14 - Correlation between feelings of fear and attribution of score.

Source: The author, 2021.

When the data on the performance of the contract inspector during the pandemic was correlated, for those who pointed out that there were changes, 15 interviewees, the majority claimed that the changes were for much better or better. Among those who claimed that there was no change in behavior, 42 interviewees, some claimed that even if there was no change, they went for better or much better (Graphic 15).

Graph 15 - Correlation between changes or not in the performance of the contract inspector and the quality of the change during the pandemic.

Source: The author, 2021.

From this item, it can be inferred that even though there were no changes in fiscal behavior, during the pandemic, the actions taken by the inspector were considered satisfactory for service providers.

V. FINAL CONSIDERATIONS

It is possible to point out, after the exposure of the research results, that the figure of the contract inspector before the service providers is recognized, and that although many claims to have notions about the activities performed, when directly confronted with the responsibilities of the same, there is a dissonance. It was possible to infer that the inspector has a very good performance and that he still transmits security and confidence in the decisions about the inspected activities. They also point out that this generates a low level of negative feelings and interference in the daily life of outsourced service providers.

It appears from these statements that, before outsourced service providers, the function of contract inspector is an active server, knowledgeable of all the processes that surround it and, therefore, has credibility.

However, when some specific details are observed in relation to the performance of activities, it is clear that improvements can be implemented, such as, for example, the creation of a Welcome, Integration and Good Practices Manual, which presents to outsourced service providers the instruments used by the inspector for his measurements, the functions of the responsible representative of the company and his respective competences, as well as rules of work safety and health, personal presentation and professional conduct.

To the top managers of the Institution, it is recommended to create competency-based management instruments, capable of identifying, with the active body of employees, professionals who have an adequate profile for inspection. The possibility of creating advantages, whether financial or meritocratic, is also foreshadowed by those who, within the institutional scope, are assigned to exercise the function in a cumulative manner to their daily work activities, thus minimizing, the burden of inspection.

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