

INFORMATION TECHNOLOGY

SOFTWARE PURCHASES: RISKS AND VULNERABILITIES

Software contracts take place in a context of heterogeneity of licenses, classifications, and marketing and distribution approaches. In fact, the same specific license can be offered and distributed in a variety of ways, with different prices and sets of features. This scenario increases the risk of receiving software different from what was planned.

Another context to be highlighted is the need to use software. The main business processes of public organizations rely on computerized systems that employ a wide range of software. However, the fact that the organization depends on a software does not mean that all its servers and collaborators need to be users of the system. As a result, poorly designed software license quantities, with weak calculation memories and without premises and evidence of the real need of users, increase the risk of underutilization or overutilization of licenses.

What the TCU found?

In 2022, the TCU carried out an audit to assess the risks associated with contract execution resulting from software acquisitions. 41 contracts were selected in 24 federal public organizations, in the amount of R\$ 1.89 billion.

The work was done through analyses on the documentation submitted by the organizations. The data gathered was tabulated, which allowed to verify that:

- 73% of contracts contained weaknesses in the calculation memory that would justify the contracted quantity;
- 77% of contracts showed underutilization of purchased licenses;
- 28% of contracts had license use above the contracted; and
- 83% of contracts did not objectively establish what should be evaluated when receiving software licenses.

In this context, two vulnerabilities were identified, which pointed out: (i) weakness in the acceptance process of contracted software, with generic procedures, in a scenario in which the asymmetry of information between organizations and contractors could lead to the receipt of different products from those demanded; and (ii) weakness in the quantity estimation of software licenses, with calculation memories without objective elements, which could result in the waste of public resources.

TCU decisions

Given the relevance of the improprieties and weaknesses found, structural referrals were proposed in order to improve the contracting of software licenses of federal public organizations and mitigate the risks identified.

In this sense, it was recommended to the Secretariat of Digital Government of the Ministry of Management and Innovation in Public Services and the National Council of Justice that they guide, in a normative way, the bodies and entities under their supervision to adopt the following measures:

In the calling instruments of contracts for the acquisition of licenses or subscription of software:

- formalize detailed and specific procedures, including checklists, to evaluate the authenticity, the adherence to what was contracted, and the quantity of licenses;
- require the inclusion of necessary information in commercial proposals, such as specific name and unique identification code of the license.

In contracting IT solutions, include the following basic elements in the calculation memory, with the possibility of traceability of information through evidence:

- the assumptions that underlie the calculations, duly justified, which should, whenever possible, be based on market measures (of fact or law), with the identification of who established them and how the contracting planning team became aware of them, when it has not been responsible for elaborating these assumptions;
- the calculation formulas defined to arrive at the quantities to be contracted;
- the input parameters, which are the quantities used in the calculations, with the respective sources of this information, that is, duly evidenced quantities;
- the explanation of the calculations made, using the previous elements;
- the identification of the people who prepared the calculation memory.

Finally, it was also suggested to the Secretariat for the Coordination and Governance of State-Owned Enterprises of the Ministry of Management and Innovation in Public Services to incorporate the above recommendations within the scope of activities to promote and establish guidelines and parameters for the governance and management of state-owned enterprises.

Expected benefits

The benefits of the audit can be enumerated as:

- increased traceability of licenses;
- lower risk of receiving licenses other than those contracted;
- lower risk of underutilization of purchased licenses;
- promotion of improvement of the Management's IT contracting; and
- increased expectation of control by public organizations.

DETAILS OF THE DECISION

Court decision 980/2023-TCU-Full Court

Case no.: 011.355/2022-0

Rapporteur: Minister Augusto Nardes

Responsible department: Audit Department for Information Technology (AudTI)