FEDERAL COURT OF ACCOUNTS

Court Decision: 2.430/2019-TCU-Full court
Session Date: 9/Oct./2019
Rapporteur Minister: Minister Raimundo Carreiro
TC: 001.281/2019-4
Responsible Unit: Department of External Control - Oil and Gas Infrastructure (SeinfraPetróleo)

WHAT DID THE TCU AUDIT?

The Federal Court of Accounts (TCU) audited, between 2014 and 2021, the review of the **Onerous Assignment Contract** (CCO) and the **Auctions of the Onerous Assignment Contract Surplus** (LVECO).

The review of the Onerous Assignment Contract was completed in 2019; The 1st Auction of the Onerous Assignment Contract Surplus occurred in 2019, and the 2nd Surplus Auction occurred in 2021.

The Onerous Assignment Contract is an exceptional and exclusive granting procedure authorized by Law 12,276/2010, which granted the right to explore and produce a fixed volume of oil and natural gas of 5 billion barrels of oil equivalent (boe) to Petrobras, in specific areas (in the pre-salt), for 40 years.

The Onerous Assignment Contract Surplus Volumes are all the volumes of oil and natural gas from the fields explored in the areas authorized according to the Onerous Assignment that exceed the 5 billion barrels of oil granted in the contract.

WHAT DID THE TCU FIND?

- **Situation found**

The Onerous Assignment Contract, signed in 2010, was reviewed in 2014. The main difference between this contract and the usual concession and production sharing regimes consists of granting a fixed volume of oil and natural gas that Petrobras shall produce since production in the other concessions is unlimited within a specific time frame established in the contract.

The contract's initial value (US$ 42 billion) was to be revised based on the updated technical and economic parameters under new cost bases, investments, and revenue projections of the economic feasibility projects of oil and natural gas production in the economically commercial areas. The review negotiation used two diverging technical expert reports from reserve certification companies. The Federal Government and Petrobras were at odds over the contract review parameters.

The CCO included 5 different areas and did not provide for the destination of the volumes that exceeded the contracted 5 billion boe in those areas. The situation required a new specific granting procedure for these surplus volumes under a production-sharing regime.

- **Criteria**

Anticipating the complexity of the issues, the TCU warned about the technical risks and the need to align the assumptions and parameters of the contract review before the final negotiations.

The TCU also recognized that the contract review processes and contracting of surplus volumes were technically interdependent, prompting them to call for an integrated analysis. In addition, technical interaction should also occur through production individualization procedures between the new production sharing contracts for each area and the Onerous Assignment Contract.

Given these assumptions, what guided the audit was the evaluation of the technical consistency of the technical and economic feasibility studies of the Onerous Assignment projects and future production sharing contracts and the measures required to reduce technical uncertainties and increase the competitiveness of the surplus volumes bidding process.

- **Cause**

The differentiated granting provided for in the Onerous Assignment, which established a fixed volume of production, neglected any surplus; contract pricing, through preliminary estimates of technical and economic parameters of production projects, with a hard-to-establish scheduled review of these indicators; the need for technical and financial compatibility between the surplus contracts and the Onerous Assignment, through production individualization processes in each area.

TCU's audit included monitoring the Assignment Contract's review, which is different from traditional concessions and contains control of challenging technical and economic parameters.

In addition, the two surplus auctions were audited, which required technical and regulatory compatibility between the production sharing regime and the execution of the Onerous Assignment Contract.

VOLUME OF AUDITED FUNDS

US$ 42 billion
(initial amount of the Onerous Assignment Contract)
R$ 81.06 billion
(awards collection – 2 surplus volume auctions)
US$ 9.048 billion
(restitution to Petrobras – review of the Onerous Assignment Contract)

OTHER DECISIONS

Court Decisions: 2.931/2018-TCU-Full court, 2.548/2019-TCU- Full court, 2.309/2021-TCU- Full court.
TC: 011.325/2015-1
Court Decisions: 2.480/2021-TCU- Full court
TC: 045.221/2020-0
Court Decisions: 1.801/2021-TCU- Full court, 449/2016-TCU- Full court.
TC: 024.607/2014-2

- **Effect**

The characteristics of the Onerous Assignment have strongly impacted both the contractual review and the surplus volumes in complexity and materiality.

There was significant disagreement between the Federal Government and Petrobras regarding the contract review parameters; it was necessary to open a bidding process for the surplus volumes, with preliminary analysis of co-participation in the production of the field; it was necessary to calculate the economic compensation for Petrobras due to the negative economic impact of the production individualization processes of the areas in the CCO; the participation of the PPSA was necessary; the compatibility of contracts has dramatically increased the complexity of the bidding.

WHAT MEASURES ARE PROPOSED?

The TCU issued several orders as a result of the audit of the Onerous Assignment.

The TCU halted Petrobras' direct contracting for the surplus volumes regarding the Onerous Assignment before defining the technical and financial parameters that would guide the Onerous Assignment Contract review.

The TCU ordered the integrated analysis of the Onerous Assignment Contract review processes and the bidding of surplus volumes, which gave rise to the co-participation analysis regarding of production of the fields in each area.

The TCU ordered the adjustment of some technical and economic assumptions for the bidding of surplus volumes and the calculation of compensation to Petrobras for the Onerous Assignment Contract; the goal was to ensure the technical consistency of the technical and economic feasibility studies of the projects to reduce technical uncertainties and increase the competitiveness of the bidding to provide greater clarity for investors' evaluation and attractive conditions for the bidding process.

The TCU ordered the immediate representation of the Federal Government by PPSA (not yet active in the processes) in the respective areas of the bidding process; plus, the TCU also ordered measures were taken for any areas not contracted in the first bidding of the surplus volumes, anticipating the processes of co-participation of the fields if a new auction were required.

WHICH WERE THE IMPACTS?

Several obstacles were addressed to hold the Auction of Surplus Volumes, and the negotiations for the review of the Assignment Contract concluded after 9 years. Petrobras received US$ 9.048 billion in 2019, which gave the Company conditions to participate in the bidding process for surpluses.

The economic parameters for calculating compensation to Petrobras were adjusted, with ower oil reference prices, increasing the federal government's revenue in future contracts for the co-participated areas. The adjustments also promoted improvements in the fields co-participation clauses to provide more security to investors and increase the attractiveness of the bidding, resulting in the collection of BRL 69.96 billion, in 2019, from the award of two (per minimum bid) of the four offered blocks.

Technical and economic conditions were also implemented for PPSA to act in the areas of the CCO, which was fundamental for the execution of the new surplus volumes contracts, through measures to support the Company's operation and rules for the evaluation of the co-participated areas.

The partial success of the first bidding process confirmed the TCU audit's warnings about the risks of uncertainty and competitiveness, as well as the need to ensure better technical treatment of the non-contracted blocks through the action of PPSA.

Following the implementation of the TCU-ordered measures, PPSA entered into a prior agreement with Petrobras for co-participation in the fields with the Onerous Assignment Contract, making it possible to finally achieve greater competitiveness in the bidding process for the two remaining blocks. The bidding was held in 2021 and yielded BRL 11.1 billion to the public coffers.