



Expertise as a defense instrument in the judicialization of public works: analysis of the role of technical expertise in the defense of companies hired by public bodies in legal proceedings

*The expert report as a defense tool in the judicialization of public works: analysis
of the role of technical expertise in the defense of companies contracted by public
agencies in judicial proceedings*

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SUMMARY

Arbitration in public works in Brazil has been a constant practice, generally involving problems of a technical and contractual nature and requiring the assistance of experts to define the facts. This article analyzes the meaning technical expertise for companies hired by the Public Authorities in processes judicial, considering its reflection in the decisions of the judges, and considering the protection of the interests of the parties in conflict. The research solves a qualitative approach based on bibliographic review, jurisprudential analysis and the proposal for case studies.

Keywords: Technical expertise, Public works, Judicialization, Defense procedural, Administrative contracts.

SUMMARY

Arbitration in public works in Brazil has been a constant practice, usually involving problems of a technical and contractual nature and requiring the assistance of experts to define the facts. This article analyzes the significance of technical expertise for companies hired by the Government in legal proceedings, considering its impact on judges' decisions, and considering the protection of the interests of the parties in conflict. The research adopts a qualitative approach based on a bibliographic review, case law analysis and the proposal of case studies.

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1. INTRODUCTION

The execution of public works in Brazil presents a series of complexities remarkable, which are often exacerbated by the intricate structure of the legal standards and the plurality of technical requirements.

These factors, combined with the specific bureaucratic and administrative scenario, often sometimes result in disputes between contractors (public bodies) and contractors (companies responsible for executing the works). Among the fundamental aspects for the resolution of these conflicts and the rigorous execution of services, this is the case of technical expertise, which is an essential instrument for the defense of companies hired by public bodies.



The technical examination constitutes a first-rate mechanism for the defense of companies before the public administration, since it allows them to be financial and technical issues are checked in detail and impartially related to contracts entered into for the execution of works.

It is intended to examine the execution of services, verifying whether all phases and contractually established steps were effectively observed as per the standards and specifications agreed upon at the time of signing the contract. When ensure the correct execution of services, technical expertise brings elements that may be crucial in dealing with penalties which would otherwise be may be considered undue or disproportionate.

One of the main roles of technical expertise, in addition to contesting penalties, is to its role as a means of conflict prevention. Often, the parties may be in disagreement about the execution of the contract with regard to deadlines, quality of the provision of services or the suitability of the service used. The expertise technique can be an important ally for the early verification of errors economic-financial aspects in contracts, such as the issue of the impacts of adjustments prices, changes in the project object or even management problems, that may be interfering with the execution of the works. If you come across such questions, with due notice, experts can give suggestions for adequacy to rebalance the conditions of the contract, preventing the problem from becoming exposed and be a source of legal disputes; As for its judicial action, technical expertise has an important role in providing expert reports, which will serve as a subsidy for the judge's decision. In this field, it is of utmost importance that the experts who act in the processes, are specialized and have in-depth knowledge that be compatible with the very nature of public works. They can basically act, in two ways: as court experts or as technical assistants. The experts

judicial are those who are appointed by the judge to act impartially, with the purpose of clarifying the technical points of the conflict.

Technical assistants, however, are hired by the parties, both by the company contracted by the public body, with the purpose of providing opinions technicians of interest to you, during the preparation of the expert report and to contest negative items for the party hiring them. This ensures greater accuracy and balance of technical analysis, ensuring that judges receive essential support for a fair and well-founded judgment.

In fact, technical expertise presents itself as a strategic resource in management public works contracts, not only in dispute situations, but throughout the entire period cycle of the constructed work.

During the execution of the contract, the performance of experts may be used to supervision of compliance with the contractual clauses to which the execution of services within the standards that were previously required and correct application of public resources. Continuous supervision of the execution of services by experts can even prevent the occurrence of failures and thus reduce the risks of penalties or legal challenges at the end of the contract.

When it comes to prevention, technical expertise is also an important ally optimization of contract management. It can provide support for corrections financial and operational throughout the work execution process, adjusting to possible modifications to the project, such as changes to the contract value, resulting from changes in delivery times or required technical changes requiring alternative solutions.

Thanks to the support of well-done technical expertise, companies can provide the compliance with legal and contractual requirements and also ensure that the

execution of the work is carried out without any problems.

Therefore, it is essential that companies working on public works in Brazil know the importance of technical expertise as a strategic tool in management and in the defense of contracts. It allows not only the correct execution of services, but also the correct use of public resources, minimizing risks legal and financial.

Qualified technical support carried out during all phases of the contract strengthens the company's position, increasing its legal security and reducing the chances of legal action or unduly imposed penalties. Companies, by recognizing and using technical expertise efficiently, demonstrate proactive behavior in managing these contracts, managing the preservation of their rights, which in this way improves the efficiency of execution of public works in Brazil.

2. THE IMPORTANCE OF TECHNICAL EXPERTISE IN PROCESSES JUDICIAL

In the context of legal proceedings, technical expertise is of utmost importance, since This is one of the means of proof to elucidate the issues that require specific technical or scientific knowledge. Established by the Code of Civil Procedure (Law No. 13,105/2015), the expertise has the main scope of supporting the judge with concrete and objective elements that enable a fair decision and substantiated. According to the Brazilian legal system, the judge sometimes does not has the necessary specialized knowledge to understand certain issues in fact that arise throughout the dispute.

Thus, at least as a result of its principle of proof and its

development, he may use technical expertise, which consists of evidence more objective and specific about facts that concern a given situation presented, the proof of which demands technical analysis in areas of knowledge such as engineering, medicine, accounting, environment, computer science, graphology, etc. Thus, the expert, who is the professional qualified by the judge or appointed by the parties, will play the fundamental role of examining the evidence, interpreting the data and prepare the report that will be the subsidiary source for the judge's decision.

The expert report, which contains the expert's conclusions, must be written clearly, objectivity and justification, so that your information is understood by the judge and parties in the proceedings. This document is therefore a piece of evidence technique that is of great importance and can be decisive for the outcome of the lawsuit. Also, the parties may appoint technical assistants to monitor the work of the official expert and present additional opinions, which reinforces the impartiality of the expert analysis and its depth.

The importance of technical expertise is accentuated in legal actions that involve parties in disputes of a complex nature, such as in cases of work accidents, asset valuation, accounting fraud, cybercrimes, environmental actions, among others. In these cases, expert evidence is crucial to finding a solution to the doubts, verify the truth of the alleged facts and avoid mistakes incorrectly resolve the justice of the decision.

In this way, technical expertise is an important instrument in the organization legal, bringing greater security and credibility to procedural procedures and, providing the magistrate with qualified technical support, directly contributes to that decisions are based on concrete and impartial facts and, thus, enable decisions to be made concrete and effect the justice of the judgment solution



of the causes discussed in the Judiciary.

2.1. Legal basis for expert assessment

Article 156 of the CPC establishes that "the judge will be assisted by an expert when the proof of the fact depends on technical or scientific knowledge". Within the scope of public works, expertise becomes essential to clarify issues such as:

Compliance of contract execution with the original project;

Correct application of financial resources;

Identification of construction faults and their respective responsibilities;

Validation of measurements and payments.

2.2. The expert and his responsibility

The court expert is essential in cases involving technical issues and scientific, especially in civil construction and public contracts management.

Appointed by the judge, he must have specific qualifications and proof of your experience in the matter to be analyzed, and can therefore act with precision, impartiality, technical rigor.



"Technical expertise is a necessary resource and widely used in the most diverse areas, including in the labor sphere. It serves to assist with technical-scientific knowledge that is beyond the reach of the judge, such as in the preparation of complex calculations, medical reports and others." (Jusbrasil, 2023)

In the construction sector, the expert's responsibility is even more demanding, since their conclusions may directly influence judicial decisions works, both public and private, in administrative contracts, in matters of quality and structural safety and other aspects. To this end, he must employ recognized knowledge methodologies, normative references and good practices of the sector, so that your report has a basis and indisputable technical support.

However, with regard to the management of public contracts, the expert must have in-depth knowledge of the current regulations governing contracts, such as the Law on Public Tenders and Administrative Contracts (Law No. 14,133/2021), as well as on technical standards and guidelines from regulatory agencies. control. He may be called upon to clarify possible irregularities in the execution of contracts, assessing overpricing, analyzing contracted addendums and validating whether the public works are in line with the requirements stated in the notices and contracts concluded between the administration and the contracted companies.

Another essential item in expert work is impartiality. As an assistant to the Justice, the expert must be unrelated to any of the parties to the process to that your work is effectively carried out impartially. Any indication of bias may compromise the validity of the report, which may be replaced in the process. Therefore, the expert must proceed in a merely technique, using concrete data, laboratory expertise, Association standards Brazilian Technical Standards Association (ABNT) or any other relevant regulation.

In addition to preparing expert reports, the expert may be called to respond



clarifications from the judge and the parties to the dispute, either through complementary technical opinions, either in a hearing to resolve them and deepen your considerations. Here the expert's ability to communicate is necessary, because he has to translate highly technical information into language that is understandable to the judge and lawyers who are not trained in the specific area of activity.

Finally, the duty of the judicial expert goes beyond technical knowledge. The expert judicial must act ethically, with commitment and with due diligence, meet procedural deadlines and provide information that helps justice and correct resolution of conflicts. Failure to comply with these duties may result in penalties such as replacement, disciplinary sanctions and even actions of civil liability, if it is proven that the behavior caused damages to the litigants in the process.

In this way, the role of the judicial expert in civil construction and in the management of public contracts require not only solid technical knowledge, but must also have impeccable ethical conduct, ensuring credibility of their analyses as a secure basis for the judicial decision.

3. CASE STUDIES

3.1. The case of the Federal Court of Auditors (TCU)

In a recent decision, the work of technical experts was crucial in reversing the application of a sanction, which was considered undue, to a construction company. The topic of the dispute was an alleged irregularity committed in the execution of a project public infrastructure, which the contracting body claimed that the company



responsible for executing the work did not strictly comply with them, having, therefore, causing the applicable administrative penalty. The construction company, however, according to his argument, he did not agree with the sentence and stated that he had fulfilled all the required technical elements, which is why he sought power judiciary to reverse the sanction applied.

Due to the impasse, the appointment of the judicial expert was decisive for the resolution of the issue with the factual elements that would be brought to the attention of the magistrate for a technical analysis. The appointed judicial expert was qualified in the civil construction segment and public contracts management, which ensured that your evaluation was written with the utmost technical rigor and control of impartiality.

The expert inspection was initiated, with the carrying out of a documentary search detailed. The expert studied the contract signed between the administration and the company construction, examining all the clauses that dealt with the contracted object, deadlines, required quality standards and construction methodologies agreed upon. The implementation report(s) of the work, measurements taken throughout the process and any evidence of compliance made by the inspection bodies.

After analyzing the documentation, the expert inspected the construction site, where it was possible to compare the actual execution of the work, in view of the service to the contractor. During the inspection, it was possible to verify that the construction company had strictly followed the established technical specifications, using materials within the established standard and complying with all required standards for safety and for engineering.



Furthermore, the experts studied any changes made during the progress of the work, which was approved by the project board. The expert confirmed that the changes were correctly justified and documented and that they did not compromised the quality and functionality of the work, showing that the application the fine lacked sufficient technical support.

With the evidence collected and the detailed analysis of the documents and the work in question, the expert made a technical report, recording that there was no basis for the penalty applied to the construction company. The expert report clarified that the project was fully in accordance with the contract and technical standards in force, thus proving the unfoundedness of the defense grounds used by the public entity to advocate the sanction.

Upon receiving the expert report, the judge understood that the conclusions were technically sound and related to evidence, which culminated in a decision favorable to the construction company. The fine was revoked and the company's name was removed from records of possible administrative penalties, thus partly avoiding damage to your reputation and your right to participate in future bids with the Public Administration.

This case highlights the importance of technical expertise as an instrument essential to the materialization of justice, even more so in cases where the technical elements require clarity, since the judicial decision must be taken based on concrete and probably non-biased data. The work of the judicial expert not only ensured that the construction company was not penalized without justification adequate, but also contributed to giving credibility to the process itself bidding process, so that administrative sanctions are imposed only when justified.



3.2. The case of the Superior Court of Justice (STJ)

Recently, in a court decision, an engineering company overcame a administrative decision that held it responsible for delays in the execution of a public works. The construction company had been penalized by the contracting body, which claimed failure to comply with the contractually stipulated deadline, attributing to the company all the consequences of delay, including the application of fines and restrictions in the future for public procurement. However, the construction company disagreed with the decision and claimed that the difficulties faced during the execution of the project would not have how to be attributed to it, considering that they would be a result of the management defective from the contracting body itself.

Therefore, the company decided to seek legal action to challenge the penalty, and the appointment of the judicial expert was presented as one of the main elements propellers in search of clarification of the facts. The judicial expert was specialist in civil construction and public contracts management and was tasked with promote an in-depth technical examination in order to assess the true causes for the delays in the work and determine whether the construction company actually breached its contractual obligations.

The expert work began with the analysis of the contract signed between the company engineering and the public entity, its annexes, schedules, clauses of liability and additional terms. The documents of monitoring of the work, execution reports, communication records between the parties and the service orders issued by the contracting entity throughout from the construction period.

From this analysis, the expert was able to identify a series of problems in the administration



of the contracting entity that impacted the progress of the work. The following stood out among the main incremental factors for causing delays:

Delay in the release of financial resources – The contract provided for transfers to fulfillment of the terms of the contract, however, the expert assessment showed that the body public had not made the payments as established, affecting the the company's cash flow and making it difficult to continue working.

Changes to the project without adequate forecasts - During the execution of the work, the contractor requested several modifications to the project scope, without providing additional time for its execution. These changes affected the initial schedule, causing delays that could not be attributed to the construction company.

Delay in approval of services and materials - The expert report proved that several requests for approval of materials and services, forwarded by construction company, had been retained for long periods in the sectors responsible of the public body. Without these approvals, the company could not advance with the work, which caused successive interruptions in the execution.

Difficulties in obtaining licenses and authorizations - Part of the construction depended environmental licenses and authorizations from regulatory bodies. However, the body contractor did not provide such documents within the deadline, directly impacting the project progress.

Based on the evidence collected, the judicial expert prepared an expert report detailed, where he concluded that the delays in the work could not be attributed to the engineering company, but rather to administrative and planning of the contracting authority itself. The report also clarified that the



construction company adopted all possible measures to minimize the effects of difficulties, communicating the problems to those responsible for administration and looking for alternatives to continue the work with the possibilities available.

The analysis of the expert report carried out by the judge considered that the argument technique presented was consistent and clearly demonstrated that the construction company was not to blame for the delays. Thus, the administrative decision based in the application of penalties to the contractor was annulled and all sanctions were canceled. The construction company had its name removed from the list of penalties, which allowed to be enabled to participate in new bids and contracts presidential elections without any costs associated with their image in the market.

This case highlights the important role of technical expertise in disputes contracts on public works, illustrating that a theoretical and well-structured analysis structured can reverse injustices and prevent companies from facing penalties undue. Furthermore, it establishes the need for efficient management by the contracting bodies, since administrative failures may have repercussions severe not only in relation to the companies involved but also with the society, which depends on the timely fulfillment and efficient realization of public works.

4. CONCLUSION

In short, technical expertise is essential for the defense of contracted companies. by the Public Authorities, especially in judicial matters regarding the execution of public works. Its action goes beyond a simple technical report; it is a vital instrument to guarantee justice and equity in contractual relations,

preventing the imposition of any undue sanctions and ensuring the protection of corporate rights. By allowing a neutral and detailed analysis of the facts, the expertise must contribute to the construction of decisions judicial decisions based on concrete evidence, that is, reducing the chance of error and promote legal security for both the Administration and companies. Furthermore, technical expertise also plays a very important role in improving public management, by enabling the detection of potential defects administrative processes and encourage the adoption of good practices in commitment processes and execution of contracts for the execution of works. Therefore, the use of expertise technique strengthens transparency, trust and efficiency in relationships contractual, creating a fairer and more balanced environment for all agents involved.

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