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SOLUTION
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INCLUSIVE

Module 4.7

Climate and environmental projects in Public Procurement

Spotting corruption: Unjustified
modifications
during contract implementation



iMonitor
select • monitor • report

Getting Started with Module 4.6



iMonitor reporting template

Monithon reporting module for monitoring public contracts

MONITORING PUBLIC CONTRACTS

Monitoring a public contract is another dimension of **civic monitoring** that allows you to make sure that the funds allocated to your community are effectively reaching the people who should benefit from them.

Public contracts are a key piece of how public resources are transformed into **actual goods, services, or infrastructure that directly affect citizens' lives**. They define the conditions by which selected **SUPPLIERS**, i.e. companies hired to provide them, are to deliver those goods, services, or works when and where they are needed.

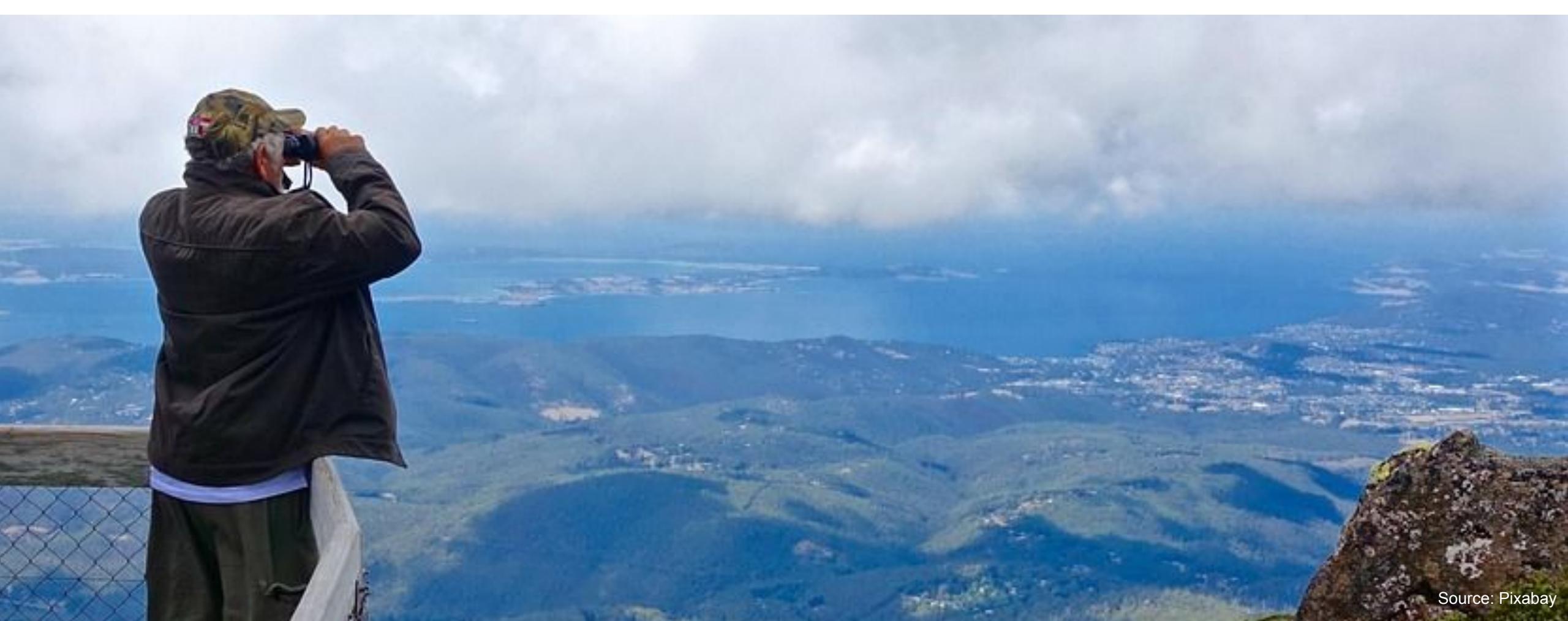
At the same time, public procurement is a part of the public administration that is vulnerable to **inefficiencies and loss of resources through corruption and fraud**, and this can happen in many different ways. For instance, ideally, suppliers are selected through **competition** to allow public agencies to award contracts under the most cost-beneficial conditions. However, often contracts are awarded in a way that lets someone unduly profit from them. This may be the case if the selection process is **deliberately made less competitive to benefit a particular supplier**, perhaps a company linked to public officials involved in the selection process. A supplier may also receive the contract at a higher cost than necessary or justifiable. In some cases, problems are observed when the contract is being implemented: the conditions established by the contract are not met by the supplier and those who should benefit from the contracted goods, services, or works receive them in lesser amounts or substandard quality, or in serious cases may not receive them at all.

Monithon now allows you to monitor this side of public policy implementation as well.

Step 2 - Contract Implementation

Corruption scheme: Unjustified contract modifications

Step 2 - Contract implementation



Unjustified contract modifications / scope creep

Step 2 - Contract implementation



Source: Pixabay

Key indicators of this type of corruption scheme may include:

- *Numerous or substantial contract variations* (also according to the clause 13 of FIDIC contracts) or extensions.
- *Additional works* - actual improvements to the contract, not elements necessary to complete the contract implementation
- *Alternative works/Replacement works* (elements replaced)



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Unjustified contract modifications / scope creep

Step 2 - Contract implementation



Life – based example – POLAND

Termomodernisation of a municipality building (additional works)

based on Supreme Audit Office report

The annex to the concluded agreements details, among other things, the retrofitting of a boiler room, the application of new plaster in one of the buildings, and floor replacement.

The contractor received an additional payment of at least PLN 450,900 (gross) for these works, even though these works should have been performed under the basic contract.

Source: Report of Supreme Audit Office: "Implementation of construction investments by the Police" LLU.430.2.2023

Nr ewid. 109/2023/P/23/066/LLU



Source: AI generated image



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Unjustified contract modifications / scope creep

Step 2 - Contract implementation



Life – based example – POLAND

Termomodernisation of a municipality building (additional works)

based on Supreme Audit Office report

Failing to calculate and pursue contractual penalties from the contractor totaling at least PLN 3.3 million.

In this case, the contractual penalties should have exceeded PLN 7.4 million. **The failure to calculate and enforce contractual penalties is detrimental to the state treasury.**

Source: Report of Supreme Audit Office: "Implementation of construction investments by the Police" LLU.430.2.2023



Photo source: www.nik.gov.pl



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Additional works and contractual penalties



How to detect ?

1. Check contract amendment notice (OJ NOTICE)
2. Knowing the value of the contract, calculate the percentage by which the value of the contract has been increased
3. You can use specialized publications and databases where material, labour, and equipment prices can be found in (Poland – e.g. SEKOCENBUD, INTERCENBUD, ORGBUD)
4. Check contract provisions in the area of penalties
5. On-site visit (professional technical knowledge required)



Unjustified contract modifications / scope creep

Step 2 - Contract implementation



Source: Pixabay

Suspicious Actions in the Contract Implementation Phase

The contracting authority **allows key persons to perform the contract who have less experience or a smaller scope of authorizations than required at the tender stage.**

How to detect ?

1. Return to the tender documentation and requirements for the contractor's key staff
2. Read the questions asked at the tender stage to see if the contractors paid attention to excessively high (disproportionate) contract terms requirements.
3. Familiarize yourself with the annexes to the contracts or contact the relevant institutions, e.g. those dealing with the implementation and control of EU funds.



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Step 2 - Contract implementation

Corruption scheme: Unjustified contract modifications / scope creep



Actions that can arouse suspicion during contract implementation phase:

The contracting authority **modify the contract based on vague „review clauses” without any description of the method of valuation of the change.**

How to detect ?

1. Return to the tender documentation and requirements in the contract (what were contract provisions)
2. Read the questions asked at the tender stage to see if the contractors paid attention to contract terms



Source: <https://pl.dreamstime.com>

Step 2 - Contract implementation

Corruption scheme: Unjustified contract modifications / scope creep



Actions that can arouse suspicion during contract implementation phase:

The contracting authority **modify the contract based on vague „review clauses” without any description of the method of valuation of the change.**

How to detect ?

3. Familiarize yourself with the annexes to the contracts or contact the relevant institutions, e.g. those dealing with the implementation and control of EU funds.



Unjustified contract modifications / scope creep

Step 2 - Contract implementation



Source: Pixabay

Actions that can arouse suspicion during contract implementation phase:

- The contracting authority modify the contract
- the contractor was changed but capacities of a new contractor were not checked.

How to detect ?

1. Return to the tender documentation and requirements in the contract in the area of professional capacities (experience, requirements for staff etc.)
2. Read the questions asked at the tender stage to see if the economic operators paid attention to above-mentioned requirements.



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Unjustified contract modifications / scope creep

Step 2 - Contract implementation



Actions that can arouse suspicion during contract implementation phase:

The contracting authority modify the contract – the contractor was changed but capacities of new contractor has not been checked

How to detect ?

3. Familiarize yourself with the annexes/documents or contact the relevant institutions, e.g. those dealing with the implementation and control of EU funds.



Source: <https://pl.dreamstime.com>



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Unjustified contract modifications / scope creep

Step 2 - Contract implementation



Source: Pixabay

Actions that can arouse suspicion during contract implementation phase:

The contracting authority **conclude a settlement with a contractor**

As part of the settlement, the contractor agreed to deliver additional equipment and the contracting authority waives its claims

“*Datio in solutum*” is a civil law institution that allows a debtor to release themselves from an obligation by providing, a performance other than the one originally agreed upon.

But under a public procurement contract??



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Unjustified contract modifications / scope creep

Step 2 - Contract implementation



Actions that can arouse suspicion during contract implementation phase:

The contracting authority conclude a settlement with a contractor

As part of the settlement, the contractor agreed to deliver additional equipment and the contracting authority waives its claims

SEE ALSO:

CJEU Case C-549/14 Finn Frogne A/S

Following the award of a public contract, a material amendment cannot be made to that contract without a new tendering procedure being initiated even in the case where that amendment is, objectively, a type of settlement agreement (...).

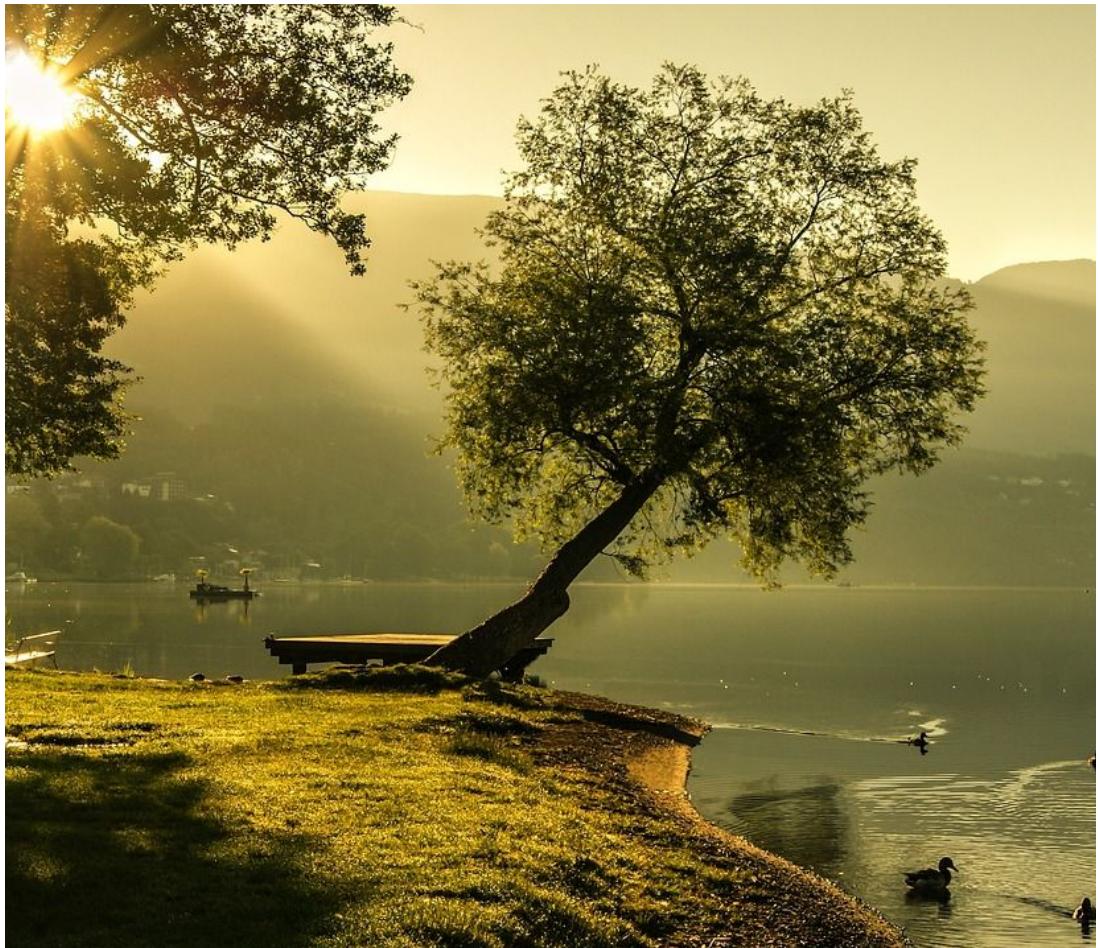


Source: <https://pl.dreamstime.com>



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QUIZ



Source: Pixabay



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Case study: *A city signed a contract to restore a polluted riverbank. The plan was ambitious: remove waste along the entire stretch of the river, plant native vegetation to stabilize the soil, and install barriers to prevent future dumping.*

But halfway through, the contract was modified. Instead of cleaning the whole riverbank, the contractor was asked to focus only on a small section near the city center. The planting of native species was reduced, and the barriers were never installed

Do you notice any red flags for possible corruption scheme?

- a) No, it just means, that only this section near the city needed to be restored.
- b) Yes. Since the contractor cleaned only part of the riverbank, the ecological restoration effect was not achieved.



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**By recognizing corruption
red flags
in climate and
environmental initiatives,
we can better safeguard
public procurement!**

**Thank you for engaging
with this important topic!**



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