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monitoring
marathon



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sar
when ideas do work



SOLUTION
SOLIDARITE &
INCLUSION

Module 4.4 Climate and environmental projects in Public Procurement

Spotting corruption: Unjustified
Contract changes and scope creep
in desk analyses



iMonitor

select • monitor • report

Getting Started with Module 4.4



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 1 - Desk analysis Section B:

Contract Modification

Corruption scheme: Unjustified contract modifications / scope creep

Contract modification

Step 1 - Desk analysis - Section B: Contract information



*What can be changed
in a contract ?*

- ☐ *Deadline for completion (or deadline for completing a stage)*
- ☐ Contractor
- ☐ Scope of the order and method of execution
- ☐ Remuneration and method of payment of remuneration



Source: Pixabay



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Contract modification

Step 1 - Desk analysis - Section B: Contract information



Source: Pixabay

- ❑ Must comply with original contract rules and national/EU procurement law
- ❑ Publication of modification notice is legally required
- ❑ Typical reasons: unexpected events, project delays, additional work, or correcting errors
- ❑ Risk: lack of transparency → inflated costs, misuse of public funds



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Reporting Template

- Contract modification

Date/time observed:	
Description of evidence (logos/badges, vehicle markings, staff lists, metadata, signatures, etc.):	
You can add any relevant files/photos/docs to document this finding in the "Documents upload" section.	

Contract modifications: Has the contract been amended or extended?

Contract modifications alter the contract's initial terms and conditions and can involve adjustments to project scope, budget, timelines, and other crucial elements. They must comply with the conditions for modifications established in the original contract, as well as with limits established in the applicable public procurement legislation (at the national and EU level). The publication of a contract modification notice is also required.

These modifications are typically made to accommodate unexpected situations, changing project needs, or to correct errors or omissions in the original contract. They may, for instance, be used to extend the contract's duration beyond the initially set end date, due to reasons such as project delays, additional work requirements, or the need for extra time to complete the project, or also to adjust the contract value within legally defined limits.

Contract modifications can be vulnerable to corrupt practices if they lack transparency and proper oversight. They can be exploited to manipulate contract terms and inflate costs, resulting in the misappropriation of public funds. Therefore, it is important to closely monitor these aspects of a contract because they can significantly impact the use of public funds and the overall project's outcome, and it is essential to ensure that these changes are justified, within legal limits and in the public interest.

It is also important to note that these modifications should not change the environmental requirements set out in the development consent or environmental decision (if such a decision was issued), especially when the project was subject to an Environmental Impact Assessment (EIA) procedure. Environmental conditions may concern for example the methods of carrying out construction works, water management, the protection of flora and fauna, environmental compensation measures, or additional monitoring requirements.

A useful question to assess the extent of this change is: How many modifications resulted from circumstances that a diligent contracting authority could not have foreseen, and/or from additional works, services, or supplies by the original contractor that became necessary but were not included in the initial procurement?

- ☐ Yes
☐ No
☐ If you can't answer yes or no, please provide explanation

Useful check:
How many modifications stemmed from unforeseeable circumstances or necessary additional works?

Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



Case study: Waste Management Contracts

- ❑ Contracts repeatedly extended without tender
- ❑ Scope expanded beyond original terms
- ❑ Justified as “emergency” needs
- ❑ Politically connected firms benefited



Source: Pixabay



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Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



Case study: Waste Management Contracts

Spotting Red Flags

- Frequent contract extensions without competition
- Sudden scope changes labeled “urgent”
- Same firms winning repeatedly
- Costs rising faster than services delivered

Source: Pixabay



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Desk analysis mission begins... caffeine boosters engaged? ;)



Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



How to monitor?

*Useful tool – document – requirement according to the Polish Public
Procurement Law*



The contracting body shall draw up a report on the performance of the contract in which it evaluates this performance if:

- 1) an amount of at least 10% higher than the value of the tender price has been spent for the performance of the contract;*
- 2) contractual penalties have been imposed on the economic operator of at least 10% of the value of the tender price;*



Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



How to monitor

Useful tool – document – requirement according to the Polish Public Procurement Law

3) there have been delays in the performance of the contract, exceeding at least:

a) 90 days, in the case of works contracts with a value equal to or exceeding the PLN - equivalent of the amount for works – EUR 20,000,000 and for supplies or services – EUR 10,000,000,

b) 30 days, in the case of contracts with a value below the PLN equivalent of the amount for works – EUR 20,000,000 and for supplies or services – EUR 10,000,000;

4) the contracting body or the economic operator has withdrawn from the contract in whole or in part or has terminated it in whole or in part.



Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



Unjustified contract modifications / scope creep

How to monitor

Useful tool – documents - according to the Italian Law



[(Legislative Decree no. 209 of 31 December 2024, containing supplementary and corrective provisions to Legislative Decree no. 36/2023 (new Public Procurement Code)] – Allegato II.14

Requirement to publish contract modification (according to the article 28 Transparency of public contracts Decree no 36 of 31 March 2023, Public Procurement Code modified by above-mentioned Decree no. 209).

National database of public contracts (Banca dati nazionale dei contratti pubblici) through the digital platforms referred to in Article 25 of Decree no 36 of 31 March 2023, Public Procurement Code.



Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



Unjustified contract modifications / scope creep

How to monitor

Requirements from EU-law

Modification of contracts during their term (article 72 paragraph 1b) and 1c) directive 2014/24/EU and article 89 paragraph 1b) and 1c) directive 2014/25/EU)



- ✓ for additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement;
- ✓ the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee.



Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



Unjustified contract modifications / scope creep

How to monitor

Requirements from EU-law

Modification of contracts during their term (article 72 paragraph 1b) and 1c) directive 2014/24/EU and article 89 paragraph 1b) and 1c) directive 2014/25/EU)

Contracting authorities having modified a contract in the cases set out under points (b) and (c) of this paragraph **shall publish a notice to that effect in the Official Journal of the European Union.**

Contracting entities having modified a contract in the cases set out under points (b) and (c) of this paragraph **shall publish a notice to that effect in the Official Journal of the European Union.**



Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



RED FLAGS (to be detect in desk analysis)

- ❑ So called „**review clauses**” can not be found in a contract or there is only general reference to the possibility of amendment (e.g. due to additional works or unforeseen circumstances)
- ❑ The obligation to describe the amendment in the form of clear, precise, and unambiguous contractual clauses means that it is necessary to specify in detail the rules for modifying the contract, rather than limiting themselves to general references to the possibility of amendment/ *see also CJEU cases: C-454/06 Pressetext, C-496/99 Succhi di Frutta, C-441/22 and C-443/22 Obshtina Razgrad.*
- ❑ Analysis of contract amendment notices indicates that the value of changes (works) often exceeds 15% of the net contract amount



Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



RED FLAGS (to be detect in desk analysis)



- Analysis of contract amendment notices indicates that the value of changes (services) often exceeds 10% of the net contract amount.
- Analysis of contract amendment notices shows that, compared to previous contracts awarded by the same contracting authority, the number of notices with the justification of unforeseen circumstances has increased.
- Analysis of contract amendment notices, shows that, compared to previous contracts awarded by the same contracting authority, the number of notices with the justification of additional works/services has increased.



Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



Life-based example - POLAND /in order to see a red flag

From January 1, 2018, to February 28, 2021, **3,393 such notices (contract amendment notices) were posted** for contracts executed in the Republic of Poland, while from March 1, 2021, to May 31, 2024, **17,990 notices were posted.**

This sharp increase in the number of contract amendments raises questions about the correct interpretation of the concept of "unforeseeable circumstances."

Source: A. Wenerski: "Zmiany umów w sprawie zamówień publicznych w świetle wyroku Trybunału Sprawiedliwości Unii Europejskiej z 7 grudnia 2023" - <https://researchportal.amu.edu.pl/info/article/UAM7c04a76b59074a1eb9e1544e23e70e05/>



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Unjustified contract modifications / scope creep

Step 1 - Desk analysis - Section B: Contract information



Life-based example - BULGARIA /in order to see a red flag

During the time limit for performance, six notices of suspension of the works were issued, five of which were due to adverse weather conditions and one of which was due to a need to revise the investment project.

Do ordinary weather conditions, which do not constitute “unforeseeable circumstances” within the meaning of recital [109] of Directive 2014/24, and a statutory prohibition – announced prior to the award of the contract – of construction works during a certain period **constitute objective justification for failure to perform the contract within the time frame?**

Ordinary weather conditions (...) cannot be regarded as circumstances which a diligent contracting authority could not foresee (...).



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**Thank you for your
attentive participation!**

**May these corruption red
flag insights strengthen
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