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New Law On Bids And Administrative Contracts: Innovation, Sustainability And Legal Challenges

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Abstract:
This article analyzes Law No. 14,133/2021, the new framework for public procurement and administrative contracts in Brazil, highlighting its innovations, sustainability foundations, and legal challenges. Gradually replacing previous regulations such as Law No. 8,666/1993, the new legislation aims to modernize the public procurement system by focusing on efficiency, integrity, sustainable development, and legal certainty. The study, qualitative in nature and based on literature review, explores topics such as competitive dialogue, the strategic use of state purchasing power, criminal and administrative liability, contractual economic-financial balance, and the role of legal advisory bodies. Key innovations include the Annual Procurement Plan, efficiency contracts, and performance bonds. However, the paper also notes practical limitations, such as the need for technical capacity in public administration and reliance on complementary regulations. It concludes that the effectiveness of the new law depends on sound governance, institutional qualification, and the adoption of responsible administrative practices.

Key Word: *Public Procurement; Administrative Contracts; Legal Innovation; Sustainable Development; Governance.*

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I. Introduction

The enactment of Law No. 14,133, of April 1, 2021, represents a significant regulatory milestone for the public procurement system in Brazil. Gradually replacing the traditional Law No. 8,666/1993, the new legal diploma seeks to modernize bidding procedures, giving them greater efficiency, legal certainty, flexibility and adherence to the constitutional principles of public administration, especially the principles of legality, efficiency and public interest. In this context, Law 14,133/2021 introduces innovative mechanisms that dialogue with the contemporary challenges of public management, such as the search for sustainable solutions, the promotion of integrity in contracting, and the rationalization of the sanctioning regime.

Normative innovation can be understood not only as a procedural update, but as a guideline aimed at the reconfiguration of the contractual public function. Nohara (2022) argues that the new regime allows the use of state purchasing power as an instrument to induce sustainable and technological national development, breaking with the traditional view of the State as a mere executor of policies, and bringing it closer to the conception of the Entrepreneurial State. Among the innovative instruments, competitive dialogue stands out, a bidding modality that allows the Public Administration, together with private parties, to jointly build appropriate technical solutions, as discussed by Aragão (2021), configuring itself as an advance towards administrative consensus.

Another axis of transformation is related to the explicit insertion of sustainable development as an objective of the bidding process. For Cruz and Pazinato (2022), the new law consolidates the extra-economic function of public procurement, attributing to bids a regulatory role, able to articulate economic prosperity, social justice, and environmental protection. This guideline requires, in turn, a reinterpretation of contracting in the light of principles such as ecological efficiency, social responsibility and long-term impact.

The reformulation of the contractual nullity regime, in turn, also deserves to be highlighted. According to Gomes (2022), the adoption of the principles of the LINDB (Law of Introduction to the Rules of Brazilian Law) in the context of nullities brings greater legal certainty to the performance of the public manager, by requiring the analysis of the practical consequences of any invalidation of administrative acts. This approach is opposed to the traditional model of absolute nullity, valuing the balance between formal legality and public interest.

At the same time, the increase in the amounts for exemption from bidding brings relevant reflections in the criminal and administrative improbity spheres. Rodrigues, Silva and Mollica (2023) discuss the possibility of applying beneficial retroactivity (novatio legis in mellius), arguing that managers prosecuted under the aegis of the previous legislation can benefit from legal changes, in accordance with the constitutional principle of retroactivity of the most beneficial criminal law.

From a critical perspective, Guimarães (2023) argues that the new sanctioning regime of Law 14,133/2021 grants a wide margin of discretion to the Public Administration, which can compromise the fundamental guarantees of the administrated, such as proportionality, due process, and ample defense. The economic-legal analysis of the deterrent function of sanctions reveals that the punitive emphasis of the model can hinder regulatory efficiency, especially in the absence of persuasive mechanisms of social conformation.

In addition, Zockun and Cabral (2021) highlight that the effectiveness of several provisions of the new legislation depends on the regulation and implementation of tools such as the National Public Procurement Portal (PNCP), the Price Registration System (SRP) and the Cadastral Registry. This raises questions about the technical effectiveness of the law in the period of normative transition.

In view of this, this article aims to analyze the main advances and challenges brought by Law No. 14,133/2021, with an emphasis on its innovative instruments, sanctioning and regulatory aspects, as well as practical issues related to its effectiveness and applicability. It is a multidimensional reflection that seeks to contribute to the improvement of public management and to the consolidation of a contractual model committed to integrity, efficiency and sustainability.

II. Material And Methods

This article adopts as a methodological procedure the literature review, with the objective of systematizing, analyzing and critically discussing the recent academic production on Law No. 14,133/2021, known as the New Law of Bids and Administrative Contracts. The option for a literature review is justified by the need to understand the normative advances, interpretative challenges, and practical impacts of the new legislation from multiple thematic perspectives, such as innovation, sustainability, consensus, accountability, and normative effectiveness.

The research has a qualitative nature, of exploratory and analytical character, and is based on secondary sources, based on the analysis of eight scientific texts selected based on criteria of academic relevance and topicality. The works analyzed were published between the years 2021 and 2023, a period that corresponds to the enactment and consolidation of the application of Law No. 14,133/2021. The textual sample includes articles from qualified legal journals, course completion papers and legal columns by specialists, all with a direct approach to the main provisions of the new bidding legislation.

The analysis of the texts was conducted through interpretative and critical reading, considering the declared objectives, the theoretical references used, the central arguments and the conclusions presented by each author. The review was organized into thematic axes, in order to allow the identification of convergences and interpretative tensions between the selected studies, in addition to enabling the formulation of a comprehensive and interdisciplinary view of Law No. 14,133/2021.

Thus, the methodology adopted allows not only the description of the legislative and doctrinal contents, but also the problematization of their effects on the daily life of the Public Administration, offering theoretical subsidies for a critical and updated understanding of the new normative framework of public procurement in Brazil.

III. Result And Discussion

The enactment of Law No. 14,133/2021 represents a milestone in the field of Brazilian administrative law, configuring itself as an attempt to modernize the public procurement system, make it more efficient, transparent, and adapted to the new demands of contemporary society. This section critically analyzes the main aspects addressed in the selected literature, highlighting advances, legal tensions and points of attention in the light of the new legislation and in chart 01, the main findings are presented.

Structuring innovations and the principle of efficiency

Law No. 14,133/2021 inserts innovations that seek to consolidate a culture of planning and results in the Public Administration. Silva and Mallmann (2022) point out that the principle of efficiency — incorporated into the Constitution by EC No. 19/1998 — finds, in the new legislation, concrete mechanisms for operationalization,

such as the Annual Contracting Plan and the Efficiency Contracts. Such measures aim to rationalize processes, link cost and public delivery, and hold agents accountable.

Among the innovative instruments, there is also the Competitive Dialogue, a bidding modality still unprecedented in the national legal system, whose introduction allows the Administration to dialogue with previously selected bidders in order to develop technical solutions appropriate to their needs. According to Alves, Mariz and Coelho (2024), this is an attempt at procedural flexibility that aims to ensure innovation, technical quality and legal certainty in complex contracts, even if it depends on strong qualification of public servants and complementary regulation.

Legal certainty and regulatory governance

The temporary coexistence between the new and the old laws (Laws No. 8,666/1993, 10,520/2002 and 12,462/2011), as provided for in article 193 of the new rule, generated uncertainties as to the validity of previous administrative regulations. Cabral (2022) analyzes this scenario and argues that regulations can still be applied, as long as they are compatible with the new legal provisions. Such an interpretation guarantees continuity of services and avoids normative mismatch, especially in view of the state's slowness in issuing new regulations.

The uncertainty regarding the fate of infra-legal normative acts also highlights the importance of robust public governance. In this sense, Pedra and Torres (2022) discuss the centrality of legal advice as a line of institutional defense, taking an active role in the prior analysis of the legality of administrative acts. The new law elevates the legal function to the protagonist of preventive control, requiring from the reviewers greater reasoning, technicality and responsibility, including functional and disciplinary repercussions.

Accountability and criminal prosecution in public procurement

One of the most significant changes in the new legislation is the restructuring of criminal sanctions. Valadares and Veiga (2024) show that Law No. 14,133/2021 details, more precisely, the criminal types applicable to bidding, specifying unlawful conduct, penalties, and aggravating circumstances. This normative approach provides greater legal predictability and reinforces the dissuasive nature of sanctions, constituting a strategy to combat corruption and administrative improbity.

However, the authors warn of the need for prudent interpretative action by the Judiciary, in order to avoid punitive excesses or criminalization of merely administrative conducts. At this point, there is a tension between the repressive effectiveness and the legal certainty of public agents, who still lack continuing education and stable normative guidelines.

Economic and financial balance and renegotiation

The economic and financial balance of administrative contracts remains one of the constitutional pillars of public procurement. The new law reaffirms this guarantee and establishes guidelines for its recomposition, especially in contracts of exclusive dedication of labor. Coelho, Bastos, and Menezes (2022) argue that renegotiation represents an ordinary form of preserving contractual balance, distinguishing itself from readjustment and review due to unpredictability.

The study also criticizes the application of logical estoppel as an obstacle to the exercise of the right to renegotiate, considering it incompatible with the legal regime of bidding, as it violates due process and equality between contractors. By rejecting the time limitation without express legal support, the authors argue that the renegotiation must respect the effective variation of costs, especially when resulting from collective bargaining agreements.

Risk mitigation and surety bonds

The literature also shows the advances in the adoption of surety bonds as an instrument for reducing risks in public procurement. Nóbrega and Oliveira Netto (2022) analyze the application of this modality in large-scale contracts, relating it to the problems of adverse selection and moral hazard. According to the authors, surety bonds promote balance between the parties and ensure the continuity of public works, even in the face of defaults.

The new Bidding Law increases the mandatory coverage to up to 30% of the contract value (art. 96, §2), seeking to avoid costly stoppages and ensure the public interest. The technical complexity of this modality, however, requires institutional maturity of the Administration for its proper application, as well as structuring mechanisms for inspection and accountability of insurers.

Table 01. Main findings.

Title	Goal	Key Considerations
Criminal Sanctions in the New Bidding Law (Law 14,133/21)	Analyze the criminal changes introduced by the new Bidding Law and their effects on the fight against corruption and legal predictability.	The new law details the criminal types, conducts and penalties, reinforcing the dissuasive nature of the rule. It provides greater legal clarity and

		requires cautious interpretative action by the Judiciary.
Competitive dialogue: an analysis of the new bidding law and the principles of Administrative Law	Explore the operation, advantages, and challenges of the competitive dialogue modality introduced by Law No. 14,133/2021.	It favors innovation and technical solutions in complex contracts. It requires technical training and faces regulatory and implementation challenges.
The renegotiation in the new Bidding Law and the unconstitutionality of the application of the logical preclusion to the right to renegotiate	Analyze the nature of the contractual renegotiation and criticize the application of logical estoppel to its execution.	Renegotiation is distinct from readjustment and review and must be guaranteed to maintain the economic and financial balance. Application of logical preclusion is unconstitutional and violates contractual principles.
What happens to regulations when the law is repealed by new legislation?	Discuss the legal status of infra-legal regulations in the face of the repeal of the legislation on which they were based.	Regulations can subsist if they are materially compatible with the new law. It avoids regulatory gaps and ensures continuity of public management.
The innovations of Law No. 14,133/2021 – (New Bidding Law)	Analyze the main advances of the new Bidding Law, with emphasis on the principle of efficiency and planning instruments.	Introduction of an annual contracting plan, efficiency contracts and expansion of principles. It strengthens management by results and the prior control of hiring.
The role of Legal Counsel in the new Law of Bids and Administrative Contracts	Evaluate the new role of legal counsel in the control and legality of public procurement under the new legislation.	Legal advice starts to act as an institutional line of defense, with greater technical responsibility. It requires legal governance and proactive action in the preventive control of administrative acts.
Surety bonds in the new Bidding Law and the problems of adverse selection and moral hazard	To examine the role of surety bonds in mitigating risks in administrative contracts.	Surety bonds help avoid stoppages and defaults. It mitigates information asymmetries and requires training of the Administration for its correct application.

IV. Conclusion

Law No. 14,133/2021 inaugurates a new normative paradigm in the scope of Brazilian public procurement, marked by advances in terms of administrative efficiency, legal certainty, and transparency. The literature review showed that, although the new legislation represents a milestone of modernization, its effectiveness is conditioned by the institutional capacity of public entities to assimilate and operationalize it in a technical and responsible manner.

The analysis of the articles showed positive aspects, such as the incorporation of planning instruments (such as the Annual Contracting Plan), the introduction of innovative modalities (such as the Competitive Dialogue) and the expansion of the use of contractual guarantees (such as surety bonds), which aim to mitigate risks and promote greater rationality in public spending. There was also an improvement in the treatment of criminal sanctions, with greater clarity and typicality, reinforcing the prevention of illicit practices.

However, the literature also points out relevant challenges. The lack of definition regarding the application of old regulations, the interpretative gaps on contractual renegotiation and the requirement of high technical training of the Administration to act in the new procedural molds require special attention. The performance of legal advisors, in this scenario, gains prominence, requiring an active and grounded posture in the prevention of litigation and zeal for legality.

It is concluded, therefore, that the full implementation of Law No. 14,133/2021 does not depend only on its normative structure, but above all on the strengthening of public governance, the continued training of the agents involved, and the adoption of administrative practices based on legality, efficiency, and control of results. This is the essential condition for the objectives of the new legislation to be converted, in fact, into concrete improvements for the Public Administration and for society.

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