

## REVIEW ARTICLE

# OSCE monitoring of public tenders issued by provincial and district municipalities

### ABSTRACT

The purpose of this paper is to analyze the main regulatory violations committed by provincial and district municipalities in the course of public tenders for the execution of works, as well as to evaluate the impact of the Organismo Supervisor de las Contrataciones del Estado (hereinafter OSCE) in identifying irregularities in the selection phase. To this end, the information contained in twenty-eight reports on grounds for invalidity issued by the OSCE's Dirección de Gestión de Riesgos (hereinafter DGR) in 2022 was reviewed, systematized and analyzed. This review revealed various shortcomings in the requirements for public works tenders issued by municipalities, the most recurrent of which were those related to the preparation, publication and registration of technical documentation, despite the existence of specific regulations defining the conditions for its preparation and dissemination. In this regard, it was considered a priority to analyze these deficiencies, given their high impact on the declarations of nullity of public tenders for works called by municipalities during 2022, with the aim of proposing recommendations to improve the analysis and review of the technical file in such selection procedures.

**Keywords:** work execution; supervision; selection procedure.

**Nilda Vargas Cubas**<sup>1</sup> 

nilanfrevargas@gmail.com

**Ana Cristina Contreras  
Concha**<sup>1</sup> 

contrerasana737@gmail.com

<sup>1</sup> Universidad Nacional Mayor de  
San Marcos, Facultad de Derecho y  
Ciencia Política, Lima, Peru

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## INTRODUCTION

Peru's Bicentennial Plan recognized the need to promote decentralized development from an economic and productive perspective in order to reduce the inequality gap between Lima and other regions, making this one of its fundamental strategic objectives (National Planning Center [CEPLAN], 2011).

In this context, public procurement is one of the most important mechanisms for enabling a country's economic and social development. Therefore, it is essential that the regulatory framework and the system itself adapt to market volatility and constant technological innovation (Ministry of Economy and Finance and the State Procurement Supervisory Agency, 2016).

In public procurement, the application of the legal provisions established in la Ley N.º 30225, the Ley de Contrataciones del Estado, y su Reglamento, and its regulations, approved by Decreto Supremo N.º 344-2018-EF, is governed by its principles. According to Guzmán (2009), the principle of openness is the basis for the creation of other principles, such as free competition, efficiency and transparency. In this sense, the call for tenders and other acts deriving from the selection process must be published and adequately disseminated in order to ensure free competition among suppliers, allowing for the participation of a greater number of bidders. This, in turn, increases the likelihood of finding a supplier capable of providing the service efficiently.

With regard to the principle of transparency, Guzmán (2009) highlights two fundamental elements: the first relates to objectivity, i.e. the need for the decisions taken by the selection committee to be duly justified; the second relates to access to information contained in the documentation that forms part of the selection procedure, including the results of the award, which must be accessible to both bidders and the general public.

Along the same lines, Viteri (2010) points out that throughout the selection process, information must be disseminated, both to bidders and to the general public, using electronic media as the main tool. Dissemination allows for greater competition among suppliers and bids,

allowing for the selection of the most suitable one, i.e. the one that offers the best quality at the most competitive price.

These principles apply to all stages of procurement and to all procurement objects in order to ensure effective public management in the fulfillment of institutional goals. This contributes to the supply and economy of a country (Palomino, 2022).

A procurement process may involve goods, services or works. In the case of works, their regulation is extensively detailed in Ley N.º 30225, its regulations, directives and other guidelines, due to the complexity of their procurement, which entails additional requirements and procedures.

A review of research on Ecuador's public procurement system shows that there are aspects of the award of small contracts in decentralized autonomous governments that may be biased in favor of certain contractors. This suggests that the system does not contribute to improving the competitiveness of contractors or the transparency of public works procurement procedures, and that improvements are needed (Rodríguez *et al.*, 2018).

On the other hand, Ponce and Loor (2020) identify a problem related to the budget in public tenders for works, due to the significant difference between the contracted prices and what is actually executed. Therefore, it is important to involve the actors involved in the execution.

Finally, Andrade *et al.* (2024) point out that although there is a tendency to award contracts to the lowest bidders, in cases where contracts were awarded to higher bidders, these bidders were found to be better rated in terms of equipment and staff experience. This leads to the conclusion that when a contract is awarded to a higher bidder, the quality is likely to be better than when it is awarded to a lower bidder.

Returning to the case of our country, the Instituto Nacional de Estadística e Informática (INEI) reported that in 2022 there will be an increase of 2.97% in the construction sector, mainly due to the execution of works related to increased investment by local, regional

and national governments. At the local level in particular, works are concentrated on road infrastructure and basic services, among others.

Remy (2005), in relation to local governments, highlights that municipalities in Peru are a democratic governing body with a long history and significant proximity to the population. For many communities, especially those far from cities, they are the only entity responsible for managing the improvement of people's living conditions and quality of life. Therefore, their actions have a direct social impact.

In the same vein, the Consejo Asesor Presidencial contra los Conflictos de Intereses, el Tráfico de Influencias y la Corrupción (2015) emphasizes that municipalities are considered key players due to their proximity to the community and the services they provide to their inhabitants. Irarrázaval (1996) complements this idea by pointing out that for the state, municipalities are the means to reach the population, while for citizens they are the institution with the greatest capacity to solve local problems.

For its part, the Organización Mundial de Ciudades y Gobiernos Locales Unidos (CGLU, 2016) argues that economic development is closely linked to local governments, as these entities address the social development needs of their citizens, including essential basic services to improve the quality of life in their territories.

In the field of research carried out in Peru, a study carried out in the District Municipality of Colcabamba during the period 2016-2018 stands out. Romero (2021) points out that delays in the completion of public works are due, among other things, to the reformulation of technical files. Therefore, it is essential that the areas responsible for procurement carefully monitor and review the technical files for public works.

Regarding the technical file, Morante (2019) points out that this document is similar to the contract file, but of a more specialized nature, since it is used specifically for the supervision of the work. It can be prepared by a specialized consultant, by the client (direct management) or by the executor of the works (in modalities such as turnkey or tender). Although it is usually prepared by several professionals,

the designer is solely responsible for the quality of the technical file.

According to Mayo and Ordinola (2022), foreseeable risks that could affect the proper execution of a project (in terms of quality and time) must be included in the technical file during the planning phase. Therefore, defects detected during the execution phase of the contract may be due to an incorrect formulation of the technical file.

In accordance with Ley N.º 30225, the Municipal Authorities issue public invitations to tender for public works. The documents that make up these selection procedures include the terms and conditions and the technical file, which may be subject to consultation and comments. If these are not accepted by the selection committee, the participants may refer them to the Dirección de Gestión de Riesgos (DGR) of the Organismo Supervisor de las Contrataciones del Estado (OSCE) for a decision

In this context, the OSCE DGR plays a crucial oversight role by responding to queries from participants in public tenders and ex officio reviewing the terms and conditions and the technical file. Its aim is to ensure that these documents contain comprehensive information and comply with public procurement rules.

In this way, the monitoring carried out by the OSCE DGR makes it possible to identify grounds for annulment that may arise during the selection process. The recommendation of annulment remedies the errors identified, which underscores the importance of this activity. If this were not done, there would be a risk that shortcomings would arise in the implementation of the works, to the detriment of the population.

In light of the above, the authors of this paper have decided, first, to describe and analyze the supervisory role of the OSCE in the selection procedures for public works tenders issued by municipalities. Second, the principles of publicity and transparency are conceptualized and illustrated with examples. Third, the execution of the works and the technical file are analyzed. Finally, in a fourth instance, the concept of nullity of the selection procedure is examined. This series of analyses has enabled the authors to

prepare this paper, with the aim of highlighting the main violations of regulations committed by provincial and district municipalities in public tenders for the execution of works, as well as the importance of the OSCE in identifying such irregularities through its supervisory activities.

## METHOD

It is important to mention that the methodology used to analyze the issues raised in this paper is based on the compilation, review and analysis of the Informes de Vicios de Nulidad (IVN) issued by the Dirección de Gestión de Riesgos (DGR) of the Organismo Supervisor de las Contrataciones del Estado (OSCE). These reports are prepared in response to requests for clarification of the List of Questions and Observations, as well as the Integrated Terms and Conditions presented by participants in public tenders for the execution of works called by provincial and district municipalities during 2022. The aim of this analysis is to identify the main causes of the nullity of these selection procedures.

On the basis of the information gathered, the authors selected specialist literature on the subject under study. The aim was to highlight the main regulatory violations committed by provincial and district municipalities in the course of public tenders for the execution of works, as well as to emphasize the importance of the OSCE's oversight role in identifying such violations through its monitoring activities. To this end, the current legal framework and the analyses of various authors specializing in public procurement were taken into account.

Similarly, the information provided by the OSCE DGR, which includes a list of the entities that filed the highest number of annulment cases in 2022, was reviewed. Twenty-eight IVNs corresponding to district and provincial municipalities were identified.

The review of the IVNs took into account the DGR's analysis, which identified the invalidity defect, the corresponding regulatory violation, and the stage of the contracting process to which the process should be reverted.

In this regard, the information contained in the twenty-eight IVNs issued by the OSCE

DGR in 2022 was reviewed, systematized and analyzed. This analysis revealed various shortcomings in the requirements for public tenders for works called by municipalities, the most recurrent being those related to the preparation, publication and registration of technical files, despite the existence of specific regulations establishing the conditions for their preparation and dissemination.

In addition, papers published in indexed, peer-reviewed journals were reviewed. These reviews have been referenced in a logical order that allows for a sequential understanding of the key concepts of the paper that are part of public procurement.

Finally, a search was made for books and theses related to public procurement and the execution of works, selecting those written by specialists in the field. These documents made it possible to synthesize the theory underlying this paper. An analysis was also carried out taking into account the current regulatory framework, which includes the Law on Public Procurement, its regulations and the directives issued by the OSCE, as well as the opinions issued by the Dirección Técnico Normativa of the OSCE (hereinafter DTN).

## RESULTS

### The role of the state contracting supervisory agency (OSCE)

According to Benavides *et al.* (2016), a comparative analysis of the regulatory frameworks governing public procurement in Latin American countries shows that, despite the different regimes and rules that govern their procurement systems, there is one common element: the existence of a governing body responsible for control, sanction, and registration functions. In the case of Peru, the Organismo Supervisor de las Contrataciones del Estado (OSCE) plays a fundamental role in overseeing contracting processes at the national level, issuing recommendations to the entities it supervises for timely implementation or correction.

The OSCE plays a particularly important role during the selection phase, as one of its main functions is to supervise the various



procurement methods, in accordance with Paper 52 of the Texto Único Ordenado (TUO) of the Ley de Contrataciones del Estado (Decreto Supremo N.º 082-2019-EF, 2019). Likewise, Paper 74 of its Regulations on Organization and Functions (Decreto Supremo N.º 076-2016-EF, 2016) establishes that the Risk Management Directorate (DGR) is the body responsible for supervising contracts awarded by entities that issue calls for tenders at the national level.

With regard to the role of the OSCE and ex officio oversight, Hernández and Miguel (2020) propose the implementation of process management in the Subdirección de Procesamiento de Riesgos (SPRI) of the DGR. This proposal seeks to establish a procedure with defined guidelines to enable effective and systematic oversight of public procurement.

It should be noted that the provisions governing *ex officio* and *ex parte* supervisory actions carried out by the OSCE are contained in Directiva N.º 10-2019-OSCE/CD (Resolución N.º 062-2019-OSCE/PRE, 2019). One of the *ex parte* actions handled by the DGR is the issuance of statements. In the event that grounds for invalidity are found, the matter shall be referred to the appropriate body and an official letter shall be issued with the corresponding corrective measures, in accordance with the provisions of Section 7.9 of Directiva N.º 009-2019-OSCE/CD (Resolución N.º 061-2019-OSCE/PRE, 2019).

On the other hand, according to the information provided by the Subdirección de Identificación de Riesgos que afectan la Competencia of the DGR (hereinafter SIRC), in 2022, one hundred and sixty-seven IVNs were issued in connection with various selection procedures. In these reports, the OSCE recommended that the heads of the entities declare the selection procedures null and void up to the stage at which the defect occurred. Twenty-eight of these reports relate to competitions held by provincial and district municipalities.

From the review and analysis of the twenty-eight IVNs, it appears that the deficiencies identified are mainly related to shortcomings in the preparation of the technical file and its registration in the Sistema Electrónico de las Contrataciones del Estado (hereinafter SEACE). These deficiencies are related to the violation

of the principles of publicity and transparency, which, as stated in Opinión N.º 121-2018/DTN, are fundamental to the public procurement system. These principles ensure that the selection procedures are accessible, clear and fair, thus promoting free competition and efficiency in the management of public resources.

### **The principles of publicity and transparency**

Paper 2 of Ley N.º 30225 establishes the principles governing public procurement, including the principles of publicity and transparency. In this regard, it states that entities must provide clear and consistent information so that all stages of the procurement process are understood by suppliers. It also establishes that the procurement process must be advertised and disseminated in order to promote free and effective competition and to facilitate the supervision and control of procurement.

In accordance with the provisions of the same paper, these principles inspire all provisions governing public procurement. In the event of a legal gap on certain matters, these must be interpreted within the framework of these principles, thus ensuring the consistency and integrity of the procurement system.

According to Guzmán (2009), the principles of publicity and transparency are fundamental in promoting greater competition among suppliers. This is achieved through the proper use of the digital platform of the Sistema Electrónico de las Contrataciones del Estado (SEACE), which allows the effective dissemination of the comprehensive conditions of a selection process.

It is during the selection phase that the terms of the contract are made known to suppliers and the public. It is therefore essential that the technical file for the work is published in full at the start of the selection procedure. This not only guarantees access to the information contained in this document, but also ensures that the conditions established are objective and in compliance with current regulations. In this way, transparency is promoted, confidence in the system is strengthened, and the efficiency and fairness of public procurement procedures are enhanced.

## Work execution and the technical file

A review of the twenty-eight IVNs shows that the deficiencies identified are primarily related to: (i) lack of a comprehensive risk management approach; (ii) failure to comply with current regulatory data sheets; and (iii) submission of an outdated budget.

In this sense, Opinión N.º 069-2021/DTN states that deficiencies in the technical file may arise from: i) lack of precision in the characteristics, scope and method of execution of the work, ii) lack of adequate description of the conditions of the site, and iii) inclusion of inconsistent or technically incorrect information, which limits the determination of the scope of the services to be performed (Dirección Técnico Normativa del Organismo Supervisor de las Contrataciones del Estado, 2021).

In this context, it is appropriate to refer to the scope of terms “work” and “technical file” as defined in the Public Procurement Law and its Regulations. Annex 1 of the Reglamento de la Ley N.º 30225 (2018) defines work as the construction, reconstruction, alteration, improvement, demolition, renovation, expansion, and refurbishment of real estate, such as buildings, structures, excavations, drilling, roads, bridges, among others. These activities require technical management, technical documentation, labor, materials and/or equipment. The technical documentation must contain the essential documents for the execution of the work, such as technical specifications, execution plans, budgets and preliminary studies, which are fundamental for determining how the work will be executed and what its scope will be.

From the above, it can be concluded that there is a cause-and-effect relationship between the technical file and the work, since the realization of the work depends on the set of technical documents that make up the file and that define the path for its execution. For this reason, it is essential that the technical file be drafted and approved in an appropriate manner and in compliance with the legal framework, since the correct execution of the work depends on it.

In this regard, it is essential to apply the guidelines established in Directiva N.º 012-2017-OSCE/CD (Resolución N.º 018-2017-OSCE/CD, 2017), in particular the provisions of

sections 6.1 and 7.2. These provisions establish that, when preparing the technical documentation, the entity must include a comprehensive approach to the management of foreseeable risks during the execution of the work, taking into account the specific characteristics of the work and the conditions of the place of execution.

According to the aforementioned Directive, the following risks may be identified during the preparation of the technical documentation: errors or defects in the design, construction risks that may lead to increased costs or delays during the construction phase, risks of expropriation, interference, geological, environmental and archaeological risks, and risks related to obtaining permits, among others, depending on the complexity of the work.

Consequently, the forms included in Annexes 1 and 3 of the aforementioned Directive must be used, as they contain the minimum information required. Likewise, the contract form must include the section “Allocation of risks of the works contract” in accordance with the provisions of paragraph 29.2 of Article 29 of Reglamento de la Ley N.º 30225 and the Standard Terms and Conditions for Public Tenders for Works Contracts.

In view of the above, it is essential that the technical file for the work complies with the rules governing its preparation, since it constitutes the set of technical documents whose correct formulation determines the efficiency of the execution of the work. If the technical documentation is deficient, this may constitute a ground for annulment which, if detected during the selection phase, may be remedied at that stage by means of ex officio annulment. Otherwise, if the deficiencies are discovered during the execution of the work, they may result in additional costs and significant delays.

## Nullity in selection procedures

According to Moron (2009), the legal system establishes the necessary conditions for any expression of will with a specific purpose to attain the status of a recognizable legal act, allowing its existence to be identified or confirmed. However, if these conditions are not met, the expressed will is invalid. For his part, Rodríguez (2020) points out that administrative acts can be declared null and void by the

Administration itself, which reflects the capacity for self-control and correction within the system.

Regarding the term “nullity”, Palacios (2002) explains that it comes from the word “null”, whose etymological origin is found in the Latin *nullus* (from *ne*, meaning “no”, and *ullus*, meaning “some”). Null is understood to mean that which lacks value because it is contrary to the law or does not conform in substance or form to the required formalities.

For example, Ghestin and Loiseau (2013) point out that nullity is currently defined as a sanction pronounced by a judge that retroactively nullifies a legal act that did not meet the necessary conditions for its creation.

It follows from the foregoing that, if defects occur in the course of a selection procedure, it is possible to declare the procedure null and void up to the stage at which the defect occurred. This concept has been extensively developed in legal doctrine by various specialists in administrative law, as will be seen in the following paragraphs.

Malinvaud and Fenouillet (2012) argue that nullity punishes the violation of the requirements necessary for the formation of a contract, which are designed to protect each of the parties. These requirements include capacity, consent, public or general interest, and conformity with public policy.

For his part, Torres (2007) points out that a legal act is null and void when it lacks an essential element or requirement for its validity, or when it violates mandatory rules, public order or morality. In such cases, the act does not produce its intended effects. Along the same lines, Cousy (2005) states that nullity prevents an imperfect act of will from being valid in the legal system and therefore from producing legal effects.

Similarly, Chanamé (2009) defines nullity as the quality of a legal rule or act that lacks effectiveness and is therefore considered non-existent by the legal system. This may be due to non-compliance by the parties or the absence of specific formalities that are strictly established.

In line with the above, we agree that the declaration of nullity of a selection procedure implies that the defective actions are considered non-existent, since they did not meet the requirements of validity required by law. In this regard, Santy Cabrera (2015) points out that nullity is the legal consequence imposed for the violation of the legal order, acting as a remedial mechanism to correct situations that are contrary to the law. Dromi (2004) complements this idea by pointing out that nullity is the inevitable consequence of legal defects.

According to Danos (2003), an administrative act is considered invalid when it violates the applicable legal system, which makes it an illegal act. In this context, the mechanism used by the state to punish unlawful conduct or restrict improper practices is based on the guarantee of citizens’ rights. All this is done with the aim of ensuring the effectiveness and efficiency of public action, taking into account the work of public officials and civil servants.

It should be noted that absolute nullity is an exceptional measure, intended for cases of extreme gravity that cannot be covered by the public interest and therefore require the application of the maximum penalty of absolute nullity, as indicated by García and Fernández (1981).

In this context, Martínez (2008) points out that there are cases of preservation of the act, which raises the question of whether a defect of nullity must necessarily lead to the declaration of nullity of the selection procedure or whether, on the contrary, it does not justify such a drastic response, allowing the process to continue (preservation). However, López (2022) warns that the power to review null acts should not be exercised in a discretionary manner, but rather in a regulated manner, that is, according to pre-established rules and criteria.

In the public procurement regime, Article 44 of Ley N.º 30225 regulates the circumstances that constitute the nullity of the selection procedure. Likewise, in Opinión N.º 246-2017/DTN, the Dirección Técnico Normativa (DTN) specifies that the resolution issued by the head of the entity must indicate the stage to which the selection procedure should be reverted, whether from the call for tenders to before the signing of

the contract (Dirección Técnico Normativa del Organismo Supervisor de las Contrataciones del Estado, 2017).

For its part, the Tribunal de Contrataciones del Estado, in Resolución N.º 0517-2017-TCE-S4 of April 6, 2017, states that nullity is a legal concept that allows public institutions to have a mechanism to remedy any irregularity that may affect a selection process, ensuring that it complies with the principles of public procurement.

It follows from the foregoing that the declaration of nullity allows the selection process to go back to the stage at which the defect occurred, so that it can be corrected by the entities and the other stages of the process can continue. This ensures that the contract complies with the rules governing it and fulfills its public purpose.

In a recent study of case studies presented to the regional government of Lima in 2017, Bravo (2021) highlights the importance of studying the nullity of selection procedures, as it allows the identification of factors and actors that influence the occurrence of nullities.

In this context, it is important to emphasize the role played by the Dirección de Gestión de Riesgos (DGR) of the Organismo Supervisor de las Contrataciones del Estado (OSCE). In the exercise of its functions, the DGR is able to identify grounds for annulment of selection procedures and communicate them to the Heads of Entities. This allows the Heads of Entities, within the limits of their powers, to declare the selection procedure null and void and to determine the stage to which it must be returned for correction. This ensures that the procurement procedures comply with the applicable regulations and respect the principles of transparency, efficiency and fairness.

## **DISCUSSION**

An analysis of the twenty-eight IVNs issued in 2022 by the Risk Management Directorate (DGR) of the State Supervision of Public Contracts (OSCE) revealed deficiencies in the procedures for the selection of public works tenders issued by municipalities. These deficiencies were mainly found in the formulation and publication of the technical file, which led the DGR to recommend that the head of the

entity declare the corresponding selection procedure null and void.

However, a review of the specialized literature did not reveal any specific research that analyzed the nullity of selection procedures in relation to deficiencies in the technical file. However, the authors decided to review the literature on the basis of key concepts (principles, nullity, technical file, supervision, etc.) derived from the twenty-eight IVNs issued by the OSCE DGR in order to determine how these concepts are interrelated.

In this sense, nullity is a legal concept that has been extensively developed by various jurists, such as Morón, Torres, and others. This concept arises when irreparable defects are found in the selection process, and its assumptions are regulated by Ley N.º 30225.

Based on the findings of Malinvaud and Fenouillet (2012), we can affirm that nullity acts as a sanction for the violation of regulatory and/or contractual requirements. Moreover, it is a tool that allows the correction of deficiencies in the selection process, ensuring that it is carried out and complies with the requirements established in the public procurement regulations until the contract is signed.

Although the annulment decision implies that the selection procedure reverts to the stage at which the defect was discovered, such a declaration allows for the correction of a defect that cannot be remedied, in accordance with OSCE Resolución N.º 0517-2017-TCE-S4. This prevents disputes and additional costs for the entity during the execution phase. Therefore, annulment becomes the appropriate remedy to ensure that the public purpose of the contract is fulfilled.

On the other hand, we consider it appropriate to have various regulatory instruments, such as resolutions, opinions and statements of the OSCE, to regulate the scope of the technical file. This is due to the importance of its technical content for the implementation of the work.

In this context, Romero (2021), in an applied study carried out in the District Municipality of Colcabamba during the period 2016-2018, pointed out that delays in the completion of public works were due, among other



things, to the reworking of technical files. Therefore, it is essential that the areas responsible for contracting carry out a thorough supervision and review of the technical files in public works, in order to prevent deficiencies that could affect the execution of the works and, ultimately, the fulfillment of public objectives.

Therefore, based on the findings of Mayo and Ordinola (2022), we can conclude that after the contract is awarded, deficiencies in the preparation of the technical file can lead to various situations that delay the execution of the work. These include additional services, time extensions, increased measurements, and disputes with the contractor, among others. Therefore, it is essential that the technical file be prepared in compliance with all legal and technical parameters that guarantee the proper execution of the work. Otherwise, in addition to the additional costs that may be incurred due to defects, the public purpose to be fulfilled will not be achieved, which means that the needs of the population will not be met. This, in turn, creates mistrust in the work carried out by municipalities.

We also believe that the principles of publicity and transparency are fundamental pillars of public procurement, as they allow for the proper interpretation and resolution of specific cases. In the context of the issue raised in this paper, it should be noted that if these principles had been respected during the selection procedures, i.e. if the municipalities had complied with the requirement to publish the technical file in its entirety, the participants would have been able to make inquiries and comments on all the information. This would have made it possible to identify and correct any deficiencies in the technical file before the award was made.

Therefore, poor preparation of technical files and incomplete publication of information by municipalities is a constant risk. If these deficiencies are not detected at any stage of the selection process, there is a possibility that the works will be carried out without taking into account the relevant technical standards and studies. This would result in a failure to meet the public purpose of the contract, which is to meet the basic needs of the population.

Therefore, we believe it is critical that municipalities identify recurring deficiencies and take steps to address the lessons learned. This includes training their staff in the preparation of technical files and ensuring that technical and regulatory standards are met. In addition, we suggest regulating the technical assistance provided by specialized professionals in the preparation of technical files, which would contribute to greater efficiency in complying with procurement regulations.

In this regard, the authors of this paper note that the responsibility for overcoming the deficiencies that led to the nullities in the twenty-eight (28) IVNs lies with two strategic departments of the entities. First, the department responsible for preparing the technical file, whether it is the entity's own technical department or an external contractor. This department must ensure compliance with procurement rules and specific regulations during the preparation of the technical file. Second, the entity responsible for procurement, which must play a diligent role in safeguarding the information in the technical file and verify that all such information is published in full in the State Electronic Procurement System (SEACE).

For this reason, we suggest that both the department in charge of preparing the technical file and the municipal contracting authority should optimally implement knowledge management among the professionals responsible for reviewing and analyzing the information in the technical file. This will ensure that the file complies with the parameters established in the Public Procurement Regulations, avoiding nullities for these reasons and ensuring that the contracting and execution of works are carried out efficiently. In this way, the needs of the citizens are met in a timely manner, strengthening trust in public institutions and their ability to manage resources transparently and effectively.

## CONCLUSIONS

- The OSCE's monitoring of selection procedures conducted by provincial and district municipalities is essential because it allows for the timely identification of deficiencies in these procedures. This makes it easier for entities to become aware of such irregularities so that they can be corrected

and the procurement process can continue in accordance with the relevant legal framework.

- Nullity is the legal solution to correct an irregularity that violates the legal order. Therefore, the declaration of nullity allows the selection process to be reset to the stage where the irregularity occurred, so that the entities can correct it and proceed to the subsequent stages of the process.
- After evaluating the twenty-eight IVNs issued by the OSCE DGR, it was found that the shortcomings in the selection procedures of the municipalities were mainly related to the poor preparation of the technical file and its registration in the State Electronic Procurement System (Seace). These shortcomings are associated with violations of the principles of publicity and transparency.
- The procedural irregularities found in the selection procedures organized by the municipalities have led to delays in recruitment, as the OSCE DGR recommended that these procedures be returned to the stage at which the irregularity occurred. This measure would, however, allow the municipalities to correct the shortcomings at that stage and prevent them from affecting the execution of the works.
- Municipalities need to effectively implement knowledge management so that professionals responsible for preparing technical documentation and those responsible for procurement can share lessons learned.
- The actions taken by the municipalities should focus on the specialized and continuous training of the professionals in charge of the preparation of the technical file, as well as on the supervision and support of those in charge of procurement in the correct use of Seace. This will ensure the full publication of the information corresponding to the technical file.

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## Conflict of Interest

The author has no conflicts of interest to declare.

## Author Contributions

Nilda Vargas Cubas (lead author): conceptualization, formal analysis, research, methodology, writing (original draft, review, and editing).

Ana Cristina Contreras Concha (coauthor): conceptualization, formal analysis, research, methodology, writing (original draft, review, and editing).