

The social clause in public tenders: strategic interdependence among companies and economic distortions

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Abstract

Purpose of the paper: *The aim of the paper is to identify the economic effects of the generalized application of the social clause, i.e., the mechanism established by the legislation and by the collective agreement that foresees the continuity of employment in public tenders.*

Methodology: *The methodological approach is qualitative and based on a multiple case study method. Through the use of a semi-structured questionnaire, interviews were conducted with the ownership and management of certain companies identified on the basis of dimensional criteria and their governance.*

Results: *The results of the research show how the social clause can generate distortive effects both on the decisions and behaviour of existing or incoming companies that could plan exit strategies from the service or manage different means for the allocation of new employees, respectively, and on the market dynamics in terms of barriers to the introduction of technological and organizational innovations, motivation of employees and expected levels of service quality.*

Research limitations: *This research is exploratory in nature and only considers the business perspective. Possible future research could help to overcome this limitation considering the other actors involved in these dynamics, such as employees, trade unions and public administrations.*

Practical implications: *The article provides several policy proposals and indications that could result in a reduction in procurement costs and an increase in the capability to monitor the quality of the service provided.*

Originality of the paper: *The work focuses on the public procurement field and addresses a specific theme, such as the social clause, via a business strategy perspective.*

Key words: social clauses; public procurement; public services; outsourcing; business strategies

1. Introduction

The public administration procures goods and services within a rather rigid regulatory framework in which European, national and regional legal standards contribute in defining the overall regulatory framework.

In public procurement, several so-called “social” clauses have existed for many years that aim to protect and regulate certain aspects of the supply of goods and services with particular reference to the employees involved in this activity. Among these clauses, the so-called “social safeguard

clause” has assumed intrinsic importance and is intended, in its binding application, to safeguard the employees of the company that performed the contracted service, guaranteeing continuity of employment regardless of any change in the contracting company. In other words, thanks to this social safeguard clause, the employees involved in the provision of a service are protected and will not lose their jobs even if the employer changes as a result of tendering procedures.

The economic rationale of this clause is attributable to some characteristics of the services performed. More specifically, these characteristics include the following:

- They are fundamentally labour intensive services with limited levels of qualification of the workforce employed;
- Employees usually belong to relatively marginal segments of labour with low wage and specialization levels; and
- The service to be provided (cleaning, portage, garden maintenance, etc.) is continuous regardless of the contract’s period of validity.

Therefore, it appears that the failure to apply the social protection clause would have harmful economic effects in various levels of analysis:

- Regarding employees, given the emergence of phenomena of expulsion from work as an effect of a change in employer, unemployment with re-employment difficulties would occur given the lack of professional qualifications; and
- Regarding public institutions, employee turnover would generate a dispersion of the tacit know-how accumulated during the provision of the service, resulting in its lower quality.

In economic and management studies, the theme of the social clause is part of the broader strand dedicated to the process of outsourcing services by public institutions that has shown strong growth over time, especially in industrialized countries (Warner and Hefetz, 2008; Jensen and Stonecash, 2005). The reasons for this high diffusion of outsourcing practices are varied, but it is essentially due to the cost advantages that can be achieved given greater competition between supplier companies (Girth *et al.*, 2012), a reduction in labour costs and a progressive downsizing of the sphere of intervention of the public institution (Alonso *et al.*, 2015). The results of the studies conducted to date however are contrasting (Bel *et al.*, 2010) and do not highlight the existence of a univocal correlation between these two phenomena, configuring a debate that still appears to be open (Alonso *et al.*, 2015; Jensen and Stonecash, 2005).

Considerable research has therefore shifted its focus to aspects of management, highlighting how the adoption of particular strategic and organizational solutions can lead to an improvement in economic performance, an increase in the quality of the services offered and an increase in the satisfaction level of the users. In this regard, the presence of a public supervisor who is present and who collaborates operationally with the contracting company improves the quality of the service (Cabral *et al.*, 2013). Similarly, the quality of public employees is important in processes of outsourcing. A manager who is perceived as exhibiting a certain level of preparation and skills but also as having a capacity for listening and motivation at work can generate a higher level of citizens

satisfaction (Dahlström *et al.*, 2018). Finally, factors that could contribute to overcoming the traditional public-private dichotomy have been identified by the increase in competition, the adoption of adequate contract management practices and the progressive involvement of the users (Warner and Hefetz, 2008).

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The aim of this article is to contribute to this debate by identifying the economic and management consequences that are derived from the general application of the social clause to tenders called by the public administration. For this purpose, the article is organized as follows. In the next paragraph (Section 2), the framework of the social clause is presented, as it emerges from the current regulatory and jurisprudential context. Subsequently, after describing the methodological approach used (Section 3) and on the basis of the results deriving from the empirical research performed, an interpretative framework of the economic effects deriving from the application of the social clause on the decisions and behaviours assumed by the companies is proposed (Section 4). Finally, the article concludes with the identification of the principal management and policy implications (Section 5).

2. The framework of the social clause

Social issues have assumed a growing importance in public procurement (Erridge and McIlroy, 2002), determining the introduction of specific clauses in the procurement of goods and services as well as in light of the role that public spending plays in the economies of industrialized countries (European Commission, 2016). From a review of the scientific work conducted on this topic, it is possible to note a tendential expansion of margins of social protection, considering a progressively broader set of aspects relating to the improvement of working conditions to be recognized and protected (Cravero, 2018; Grimshaw *et al.*, 2015; McCrudden, 2004). In fact, public procurement has been used to promote and affirm social goals in terms of reduction of working hours, determination of fair wages, increase in security conditions, recognition of human rights (Graafland, 2002; Mamic, 2005), removal of racial, religious and gender discrimination (Carter, 2000), employment inclusion of disadvantaged people, protection of minorities (Carter *et al.*, 1999; Krause *et al.*, 1999) and reduction in the conditions of unemployment (Erridge, 2007).

On several occasions, these social clauses have been promoted by the European Commission since the end of the 1990s (COM /1998/148; COM /2001/566) and considered to be one of the fundamental tools for directing entrepreneurs towards behaviours that are socially and environmentally responsible. The Directives 2004/17/CE and 2004/18/CE on the subject of public procurement have confirmed this EU orientation and provide a new organization for reserved procurement.

In the Italian legal system, the social clauses were originally designed to be interpreted primarily in relation to the guarantee of economic treatment in favour of the worker. Indeed, “through the promotion of the application of the minimum standards of treatment, the legislation did not really

propose the objective of the so-called extension of collective agreements (...) as it did the objective of ensuring better employment conditions for employees of companies who were recipients of the so-called social clauses” (Ghera, 2001). Based on this logic, an equal level of competition was guaranteed among the competing companies at least in terms of hourly labour costs. However, the following three economic factors led to a change of perspective, shifting from the protection of minimum salary conditions to that of guaranteeing employment continuity:

1. The process of restructuration and liberalization of public services and the need to contain public spending;
2. The recognition that firms legitimately have different average total cost structures since they abide by different regulations in terms of labour costs or have different competitive abilities; and
3. The need to not restrict access to the public services market for organizations that have registered offices – and thus employment contracts – in countries outside the European Union.

In relation to the first point, the public administration, in its role as contracting authority, has a need to benefit from public services based on management, organizational and technological innovations, such as in recognizing the freedom to determine hourly labour costs for a company that intends to participate in the tender for the assignment of the service. These features also relate to the objective of limiting the total public expenditure (Olgianti and Danovi, 2015).

The second point highlights that the structure of the cost of labour in firms is objectively different, even in the context of the same economic activity, due to the effects of a different combination of workers and technology. In this regard, the company participating in the tender can justify abnormally low economic offers with reference to the minimum salary conditions of its workers. Other justifications include fiscal tax relief, the application of supplementary agreements that allow a reduction in the cost of labour, and the assignment of temporary project contracts and not salaried employment contracts to a large part of the workforce (Costantini, 2014). Consequently, the hourly labour cost can no longer be considered a rigid and equal lever for all companies that intend to participate in a public contract. Finally, the social clauses that safeguard workers’ minimum salary conditions can become barriers to the free movement of companies in the European Union (Costantini, 2014).

These three factors, therefore, have led to a shift in perspective from the safeguarding of hourly labour costs to the guarantee of employment continuity. In a certain way, the incoming company is faced with a loosening of the constraint of the hourly labour cost with some aspects left to collective bargaining between employers and employees and with the insertion of a constraint for continuity of the employment relationship for the employees of the outgoing company (Impicciatore, 2015). This innovation is important regarding strategic consequences for the various players involved, from the workers to the public administration up to the outgoing and incoming companies.

In the current Italian legal system, the main legislative reference source for the social safeguard clause is found in Legislative Decree

50/2016, the so-called Procurement Code (Ferrara, 2018; Russo, 2017). However, current regulatory provisions run the risk of “a sort of social constraint on the exercise of certain economic activities of public utility and, ultimately, a condition of legal origin when new entrepreneurs enter the market” (Ghera, 2001). Moreover, the European Court of Justice (ruling CGCE C-460/2002) has argued for some years that “the rehiring obligations are (...) incompatible with European Union law, because they could compromise the openness of the markets, discouraging potential newcomers because of the emergence of (high) labour costs, which are not determined by their entrepreneurial choices, with a consequent limitation of the freedom to run a business and to provide services” (Costantini, 2014).

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In this respect, the social clause has been the subject of a vast and above all recent legal interpretation, which has profoundly modified its content and application methods. In particular, the Council of State (Section III, Sentence no. 2078 of 5 May 2017) established that “the so-called social clause must be interpreted in accordance with national and community principles regarding freedom of entrepreneurial initiative and competition, otherwise it would become detrimental to competition (...), as well as adversely affecting free enterprise, recognized and guaranteed by Art. 41 of The Constitution (...); consequently, the obligation to reabsorb the workers employed by the outgoing contractor, in the same job and in the context of the same contract, must be coherent and made compatible with the business organization chosen by the incoming entrepreneur”.

We are therefore faced with a legal strand, which has given degrees of freedom and decision-making discretion to employers especially in recent years while acknowledging the social and economic value of this social safeguard clause to limit as much as possible some of the distorting effects that could result from its strict application in the context of public administration contracts (Ferrara, 2018; Pallini, 2016; Tomo *et al.*, 2016; Boitani and Cambini, 2014). Compared to these studies and based on the assumption of a tendentially “rigid” application of the social safeguard clause, this article is part of a fruitful strand of studies that identifies important contaminations between labour lawyers and economists (Romagnoli, 2003; Salvati, 2002; Antonelli and Paganetto, 1999) and intends to answer the following questions: What are the effects of the social clause for contractors? What are the effects on the market, with particular reference to the public administration as contractor of the service?

3. Research methodology

The empirical research performed is exploratory in nature in that it is aimed at investigating the decisions made and the behaviours assumed by enterprises with respect to the provisions of the social clause and the various tender conditions that could occur. Consistent with these conditions, the nature of the investigation could only be qualitative as a preferable and usable approach at the moment when the knowledge of a given phenomenon and the possibility of providing adequate explanations

appear reduced (Eisenhardt, 1989). The methodology of the case study makes it possible to study the behaviour of firms in a real environment, capturing all the possible dimensions (Yin, 2017), and simultaneously identify the motivations and the methods in which decisions were made and specific problems were addressed (Gibbert and Ruigrok, 2010).

Four companies were interviewed, all of which were very involved in public procurement. Their identification occurred through the use of two distinct criteria:

- a) Significant size in terms of employees and turnover (i.e., greater than 100 employees and 2.5 million euros, respectively); and
- b) Different legal forms to grasp differentiated behaviours due to different purposes and different governance arrangements.

The main characteristics of the companies involved and the related interviews performed are reported below.

Tab. 1: The companies involved in the research activity

Company	Legal form	Employees	Turnover (in millions)	Interviewed	Interview duration
ALFA	Joint stock company	704	83, 6	CEO and Human resources manager	1 hour 26 minutes
BETA	Worker cooperative	890	69, 4	Human resources manager	45 minutes
GAMMA	Worker cooperative	816	23, 6	President	50 minutes
DELTA	Social cooperative	158	3, 7	President	1 hour 10 minutes

Source: authors' elaboration

In relation to the specific activities performed, the research was conducted by following various methodological steps.

First, information was acquired directly from the companies. On the basis of a semi-structured questionnaire, interviews were conducted with the owners and the company management during September and October 2018. The choice of this method of investigation may be considered the most appropriate given the objectives being pursued, the number of the interlocutors involved and the quantity and depth of the information that could be collected. Every business owner or manager was free to explain his experience and to state his opinion in relation to the topic addressed.

Second, the information obtained was first recorded and subsequently transcribed to perform the processing of the texts. This last activity was performed through a comparison between the authors (Stake, 1995) who, from the reading of the individual transcripts, identified the most recurrent themes in the testimonies of business owners and managers, the resulting decisions that were made and the perceptions that they had of the market conditions with reference to the behaviour of the competitors and the contracting authorities.

Third, to perform a triangulation of the data (Yin, 2017), the results derived from the analysis that was performed were compared and supplemented with information from secondary sources, including both

internal (presentations and company reports, accounting documents and, when provided, documentation relating to participation in tenders) and external sources, which consisted mainly of national and regional newspaper and magazine articles.

Finally, at the end of this process, the most appropriate method of interpretation and presentation of the results was decided, i.e., the definition of the themes to articulate the empirical part of the present research. Thus, it was possible to investigate the economic effects induced by the application of the social safeguard clause and the relative decisions made by the businesses when they were forced to leave a contract or manage a new contract.

4. The results of the research

4.1 *The strategies of the outgoing companies*

The social safeguard clause can contribute to following a strategy on the part of the outgoing company, that is to say the company that is currently performing the service activity but which will soon be submitted to a new tendering procedure with the consequent risks of departure from the same due to the replacement by a competitor. This appears to be of particular relevance in the following cases:

- A company is in a particular critical economic and financial condition, which requires the implementation of restructuring and corporate reorganization strategies;
- One of the options of the turnaround company is to intervene on the total workforce employed by the company;
- The company is multi-service or in any case operates on behalf of a plurality of clients (both public and private); and
- The service that is currently being offered to a public institution is not particularly profitable and generates management, organizational and economic problems to the point of making an exit strategy rational.

In similar circumstances, the new tendering procedure for the assignment of the service constitutes an opportunity for this company because it is able to generate the exit conditions from the contract and simultaneously raise its overall competitiveness. The current regulation is the framework within which to pursue this intentional exit strategy. Workers who benefit from the application of the social safeguard clause must work, for example, within a specific service (the one that is the object of the contract) for a minimum period of time (six months, for example, for the national labour contract in the environmental hygiene sector and four months for multiservices). Thus, the outgoing company must prepare its exit strategy well in advance in compliance with the time constraints that are defined by current legislation. It is also clear that this exit strategy must be unexplained so as not to generate anxiety and tensions within the business organization (relationships with the employees who are concerned, trade union relations, etc.).

At this point, it is necessary to assume that the outgoing company is characterized by having a total workforce that is employed in a plurality

of service offers (both to public and private subjects). This characteristic makes it possible to operate effectively on the mobility of the employees and even simultaneously given the multiplicity of the services offered.

Company GAMMA: *“If the company has a single contract in a territory, it is obvious that the list of employees is automatically prepared. They are the only resources available. However, if the same company loses a contract in a territory where it carries out many activities of the same nature, within this contract it is likely that other people have also worked over time. For this reason, making a list of the people who permanently occupied that workplace is not so automatic. It is probable that even someone who is not employed in that service may end up on the list of this lost contract”*.

In this context, the outgoing company could intentionally pursue three strategic options during the period prior to the contract expiration.

First, it could aim to increase the total number of staffs employed in this contract, reallocating the workforce at its disposal. In the short term (for example, six months), the company would find itself managing this contract under more critical economic conditions due to a higher overall labour cost.

Second, the outgoing company could proceed to modify the qualitative composition of the staff required without altering the overall number. In other words, in the context of the total number employed, those who have subjective characteristics of lower efficiency and productivity could be allocated to this service, whereas those originally present would be moved to other services.

Finally, the outgoing company could allocate staff, replacing some who, due to seniority or other reasons, have an average labour cost that is higher than other employees. Thus, the employees who are characterized by higher wage levels could find themselves involved in the expiring contract. Some empirical evidence seems to suggest these theories.

Company ALFA: *“There are companies that assign a large number of employees to contracts that are lost. Furthermore, these companies don't only act on quantity by increasing the number of employees but also on quality by assigning those with lower productivity”*.

Company GAMMA: *“When changing contracts, each company tends to adopt behaviour that may not be clear. In particular, when projects are organized within the territory, in the list of a changing tender, people with low productivity may have been inserted, and also those who are working under other contracts”*.

Therefore, these are exit strategies through which the outgoing company tries to pursue a double objective: a) optimize its internal organization and improve its efficiency and b) penalize its competitors by transferring personnel characterized by lower productivity or higher costs to them.

The consequences of this strategy of the outgoing company can be twofold. On one hand, if the competing companies participating in the tender have previous experience as well as accurate and precise knowledge and information regarding the efficient working conditions in offering this service, the exit strategy of the outgoing company is "unmasked" and consequently two options are possible. a) The competing companies do not take part in the tender to avoid taking the risk of winning it and then having

to face higher labour costs, which make this service not economically sustainable. In this case, the exit strategy of the outgoing company has, in fact, become a strategy to deter the entry of potential competitors. b) Some competing companies decide to participate in the tender in an economically credible manner because they believe they can internally relocate excess staff or those with lower productivity, thus recovering cost-effective margins. The empirical evidence gathered suggests some of these considerations:

Company ALFA: *“There are anti-competitive mechanisms that are applied by existing suppliers in order to defend their positions. Through the social clause, these companies try to make a contract seem as though it is not advantageous from an economic point of view. For example, if my service contract is running out and I know that in a few months a new tender will be announced, I can, in the meantime, load all the personnel I have into that site in order to transmit a totally inefficient view. Then, through the ability of the companies that participate in the tendering procedure and that make the inspections, they can understand from their own experience whether that type of service can be organized in a different way”.*

On the other hand, if the competing companies do not have a degree of knowledge and information that is particularly thorough regarding the conditions of efficiency and productivity of this service, they can participate in the tender and perhaps win it, while proceeding to the full application of the social safeguard clause. This may depend on the inexperience of the company participating in the tender (perhaps because it does not specialize in this business) or occur because the information provided transparently by the public institution awarding the contract does not analytically and precisely specify the characteristics of the personnel currently employed by the outgoing company. Thus, the exit strategy of the outgoing company can achieve its aims and objectives, which include reorganization and corporate restructuring starting from the transfer of part of its workforce.

The credibility of the information offered in the tender by the outgoing company in terms of jobs currently employed is however subject to verification by the incoming company to the point of generating possible conflict and ex post negotiation.

Company GAMMA: *“These are all things emerging immediately. When you begin to hold interviews with the workers in the trade union, you immediately understand whether or not they are employed in that service and for how long”.*

Company DELTA: *“Then it is logical that in trade union mediation, questions are asked, and if they do not know how to answer, it is clear that they were not working in that service. There is always an attempt to transfer personnel who are not part of that service, or who are more problematic than others, to the new company”.*

4.2 The strategies of incoming companies

The second subjective element involved in this procedure for the assignment of services is the incoming company, which, in contrast to the outgoing company, must manage the effects resulting from the application of the social clause.

In abstract terms, it is necessary to hypothesize two different conditions of tender for the service by the public institution: a) a service that does not undergo substantial changes from an organizational point of view and that is contracted out with the same previous conditions. This is the case in which the social clause produces its maximum effects in terms of full transfer of previously employed staff; b) a service that was substantially changed in relation to the award criteria and thus can be considered different from the previous management. The interviews performed reveal that this second typology is largely dominant.

Company GAMMA: *“The current problem is that contracts are increasingly assigned deteriorating economic conditions. A contract that previously provided for certain conditions suddenly becomes a poor contract. This is now systematic”.*

Therefore, almost no contract is stipulated under the same conditions in which it was originally issued, and there are various reasons for this approach on the part of the public administration: a reduction in the starting bid amount due to the reduced financial capacity of public institutions and the on-going process of spending review; the consolidation in a logical bundling of a plurality of services that are required from companies; the foresight, with a view to innovation, to introduce new methods of organization and delivery of the service to improve the quality offered.

Faced with a situation of this type and with a need to reabsorb the employees from the previous contractor, the incoming company has the possibility to operate on some variables. In other words, the adjustment mechanisms with which the company tries to reduce the effects resulting from the social safeguard clause take over.

There are three variables that the incoming company can use to mitigate the effects of the social safeguard clause – and therefore contain the overall labour cost attributable to this specific service:

- a) The hourly wage to employees. The entering company can try to redefine, where legally possible, the economic conditions of the hourly wage in favour of the employees that have been obtained to reduce the cost of labour and recuperate profit margins;
- b) The total time allocated to the service. In these terms it becomes central to act on the basis of the total working hours to contain the overall labour cost; and
- c) The absolute number of employees that are absorbed. This leverage can be used in the context of the positions legally permitted by the concrete application of the social safeguard clause as well as by negotiation with the unions and with the outgoing company of aspects of "alteration" of the total workforce employed in the pre-exit phase.

The current legislation concerning the social safeguard clause intervenes on the absolute number of employees. Factors related to employment contracts is reflected in the variable of the hourly wage, while the specific provisions provided for in the tender could have an influence on the total contract hours. It is evident that excessive "restriction" to free enterprise (due to the absolute binding interpretation of the three variables in a contextual way) would be unsustainable even legally.

Empirical research reveals that the incoming company assumes a different behaviour for each of these variables.

In relation to the contractual conditions of the employees to be absorbed, the margins for action of the entering company are extremely reduced, if not even absent. The hourly costs of the paid wages are determined exogenously by the public authorities and the trade unions and anchoring to these values becomes an indispensable requisite to be respected to participate and compete in tenders and avoid any disputes.

Company ALFA: *“The hourly wage is made up of the unit cost of the labour established by the ministerial tables and by the national collective contracts. Currently, it has become mandatory to refer to these data at the moment when presenting justifications for manpower. Therefore, it is necessary to specify the part of your offer that is dedicated to the cost of labour. The company may also provide different costs from these; however, it is so difficult and dangerous to justify this choice that it is not advisable to practice such an alternative”.*

The second variable, namely, the total contract hours allocated to the service, is what normally constitutes the leverage with which it is most possible to intervene to mitigate the effects of the social safeguard clause. Among other things, organizational or technical innovations, which are occasionally requested or solicited by the contracting authority itself, can generate the conditions of the service with fewer total contract hours while safeguarding the quality standards of the offer.

Company BETA: *“The last ten years have been those of the Spending Review. The amount of work has been reduced and, as a result, the use of personnel has also decreased. Faced with these situations, not only the service is reorganized but a reduction in the timetable is offered to employees. These paths must be studied, built and consolidated at the union tables”.*

Company GAMMA: *“If the services to be rendered in the new contract are smaller or different than those in the previous contract, it is obvious that a different agreement must be found. Therefore, in the face of a diverse articulation of the service, the parties must come to an agreement on the reduction of hours”.*

However, the remodulation of the service through a reduction in the total number of hours does not occur automatically and linearly. Occasionally, the same public contracting authority can precisely define the total contract hours, specifying the time frames during which the service must be performed, or it can simply provide a reward in the selection and award clauses of the tender according to the estimated time by individual bidders. In both cases, a strict correspondence is assumed between the quality of the service provided and the total hours spent. In reality, this assumption is questionable from different points of view. However, in a context in which it is assumed that the contracting public administration does not have the skills and human resources to effectively monitor the intrinsic quality of the service performed, there is a tendency to base it on an indirect indicator that is easily monitored, such as the total contract hours. In the event that the public administration accurately defines the total contract hours as a constraint on the service being offered, this leverage can no longer be used by the incoming company for containing

the economic effects derived from the application of the social safeguard clause. On the other hand, in the case in which the public administration foresees incentives in the tender specifications in relation to the total contract hours, then the incoming company can evaluate and weigh this incentive with respect to the overall conditions in the offer. In the latter case, therefore, there is a margin of discretion on the part of the incoming company in "manipulating" the variable of the total contract hours to contain the economic effects derived from the application of the social safeguard clause.

Company ALFA: *"Very often the total hours are an incentive. However, if the points that are given to this indicator are many, the company is obliged to organize itself in an "analogical" way. It will have to use all the people that the social clause provides for carrying out the contract activities, not being free to organize itself otherwise. In this way the company achieves very low margins"*.

Finally, the last variable that influences the behaviour of incoming companies is the number of employees absorbed as a result of the social safeguard clause. Generally, the possibility of intervention by the company on this aspect in terms of failure to hire new workers from the previous contract is extremely limited, and this poor decision capacity is derived from various aspects. First, this strategy would be diametrically opposed and therefore not admissible with respect to the ratio and the legislative provision for the social safeguard of workers. Second, it represents the most highly opposed element by the trade unions in negotiations conducted for the transfer of contracts. Finally, as noted above, its effects can be mitigated by a reduction in the total contract hours allocated to the service.

Company GAMMA: *"The failure to hire new personnel does not occur. This is a decision that will never be accepted by the trade union. There may be cuts that are more or less in proportion with the different professional profiles, but a situation in which some people are not hired almost never happens. There is specific legislation for this situation and who behaves differently would receive any kind of legal appeal"*.

In any case, while acting on the leverage of the hourly work schedule and to a lesser extent on the hourly labour cost and the number of employees, the incoming company can also intervene on other variables to recover margins of efficiency and economy. In particular, the incoming company can decide to cut other costs (perhaps referring to the overall organization of the company and not to a single contract), to contain its overall profit levels, to limit purchase costs with suppliers of the materials used in the contract or to reduce the quality of the service offered, attempting to preserve and, if possible, increase its competitiveness.

Company GAMMA: *"In the cleaning sector, the tendency to impoverish contracts has been going on for years. More than profits, the contribution to the general costs of the cooperative is penalized"*.

4.3 Effects on the market

The social safeguard clause also determines overall effects at other levels of analysis. In particular, together with other factors, it is able to contribute to the activation of specific dynamics related to the following:

1. Structure of the sector, with particular reference to the size of competing companies;
2. Barriers to the introduction of management, organizational or technological innovations in the performance of the service;
3. Level of work motivation of the employees who are "guaranteed" by the social safeguard clause; and
4. Expected and provided quality levels of the service offered to the contracting public institution.

In relation to the structure of the sector, the social safeguard clause has a different effect on companies depending on their average size. In fact, larger incoming companies (due to their "portfolio" of services to public and private customers) can proceed with the relocation of surplus staff who are present in a contract. Thus, they are able to acquire contracts with occupational "redundancy" and then proceed by restoring the conditions of efficiency and productivity. Conversely, small businesses entering a new contract may find themselves compromising their overall productivity, efficiency and cost-effectiveness. Thus, the capacity to absorb inefficient conditions - derived from the full application of the social safeguard clause - has very different impacts on large and small enterprises. In dynamic terms, therefore, this sector is subjected to the stress of a trend that favours growth to an average company size.

Company BETA: *"The social clause certainly has a greater impact on a small company. We are large and if we were to acquire people who have profiles that are out of line, we find a way to place these skills in some replacements or for additional activities in other services"*.

Company GAMMA: *"Workers are also relocated to other services. We have developed appropriate tools, such as the negative hour bank, to manage and compensate for these activities so that there is no excessive reduction in working hours"*.

From the companies' testimonies, the condition of asymmetry between large and small enterprises that is derived from the social safeguard clause is also amplified by a further aspect that is attributable to the negotiation capacity that larger companies show towards union representatives when they are required to identify employment solutions capable of preserving the workers' positions.

Company BETA: *"We have never had any problems and the percentage of disputes is really low. A large company succeeds in better amortizing the social clause because it has a different organization and contractual capacity, also from the union's point of view"*.

Company GAMMA: *"Normally these agreements are closed at the union's negotiating table, assigning people to other types of services. However, the situations are different. There is the company structured over a fairly large territory and the small company that may work with three contracts, located in a single territory"*.

In relation to the second factor, namely, the introduction of labour-saving innovations of a managerial, organizational or technological type in the performance of the service, the social safeguard clause can act as an inertial and frictional mechanism, hindering the propensity of companies to introduce new solutions for delivery of the service. In these circumstances,

i.e., when a trade-off is generated between the protection of previous employment levels and the introduction of labour-saving innovations, if the application constraint of the social safeguard clause is very strict, then the sector will tend to not introduce these types of innovations. Among other things, the problem is particularly relevant when the labour-saving innovation is able to generate an increase in the quality level of the service. In this case, the public institution finds itself operating in the dilemma between a request for full application of the social safeguard clause (with a consequent barrier to the introduction of innovation) and the possibility of achieving higher quality service levels (subject to the introduction of innovation).

Company ALFA: *“When there is a different organization of the service than in the past, it is necessary to be able to explain the innovation adopted, how the workforce will be reduced and for what reason this can be considered an improved solution for the institution because otherwise, only the labour reduction emerges. This is a common topic of discussion with the widespread contracting authority”.*

When the introduction of technological innovation is hampered, the public administration continues to have a very high cost structure in the acquisition of certain services. In fact, firms do not have an incentive to innovate unless they work for both the public and private sectors. In the private sector, since clients send "signals" and show instances of cost restraint, contractors may be induced to introduce technological innovations to provide a response to the requests of their private customers. This could lead to the presence of companies in the same sector that are "dual", namely, those that, on one hand, introduce technological innovation to meet the needs of the private sector and, on the other hand, that do not innovate, working with public clients at higher costs. Therefore, the public cost to acquire a service could be dynamic over time and greater than the private cost to purchase the same type of service. When companies that have a presence in the private market that have internalized technological innovations and have lower cost structures decide to enter the public market, they could have a significant competitive advantage while discounting the effects of the social safeguard clause.

Ultimately, the adoption of managerial, organizational and technological innovations can be problematic in small businesses, whereas this adoption may generate specific competitive advantages in other types of enterprises. This last circumstance is attributable to three types of enterprises: the company that operates in the private market compared to one that completely acts in the public market; the multi-business firm considering that it operates in a sector that is capable of absorbing employment; and the large company that, despite being specialized, manages multiple lots and is therefore able to optimize the dynamics of personnel absorption that is envisioned by the social safeguard clause.

The third level of analysis involves the effects of the social safeguard clause on the level of the motivation of the personnel employed in the contract. For some aspects, with the rigid application of the social safeguard clause, the worker appears to be guaranteed in her/his duties and activities, but s/he cannot capitalize on her/his knowledge and skills in the career

paths of a firm due to the temporary nature of the contract and possible replacement of the current employer over time. These factors can generate working conditions that are characterized by lower motivation levels and less loyalty to the contracting company with obvious consequences in terms of individual and collective productivity.

Company ALFA: *“In these contracts, there are pathological situations of personnel who think that the position granted is a permanent position. The contractor who must inevitably absorb these people may see negative effects on productivity and efficiency”.*

Company DELTA: *“The bond of employee to the work but not to the company is harmful, especially in services performed for the public. The worker is loyal to the public administration and often feels like a public employee because, once the job is done, he remains and the company changes. This creates situations that are difficult to manage”.*

Therefore, a situation arises in which the company does not have any leverage for motivating its employees by ensuring them a job for long periods of time, given the average duration of the contracts, or guaranteeing them adequate career paths given the probability of losing the contract in the future. The employee is aware of all this and therefore does not develop a sense of belonging within the company. Consequently, it is a world in which it is extremely difficult to introduce merit-based rules aimed at rewarding deserving workers since the duration of similar incentive mechanisms would be, by definition limited i.e., linked to the duration of the contract.

The situation may seem even more problematic for cooperative enterprises in which the role of the employee is often associated with that of a worker member. In these circumstances, the interruption of the employment relationship can also limit the status of member due to the social safeguard clause, indicating a clear prejudice to the identity of the cooperative.

Company BETA: *“We are a cooperative and people are all members except for those who are hired as employees through new contracts. These staff can choose. We can make a proposal to them, but they are not obliged to become members. Many times, however, they have asked to become members over the years. This gives us great satisfaction”.*

Company DELTA: *“We had people who didn't leave after the tender was lost. At the beginning they preferred a reduction in hours, but they stayed with us until we were able to get them back to the number of hours they had done previously, but they did not think of leaving us at all”.*

Finally, the fourth factor influenced by the safeguard clause is the quality of the service provided as well as the stickiness of pricing with respect to the contracting public administration. In fact, this clause entails, to a large extent, rigidity in the price offered in the face of a condition of continuity of the employment relationship, but it does not particularly determine even a change in the quality of the service offered. As a rule, it is assumed that with the safeguarding of employment levels, the tacit knowledge and skills accumulated by these employees and consequently the quality levels of the service are preserved. However, two previously illustrated factors, namely, the barriers to the introduction of innovations and the motivational levels

of employees, significantly influence the qualitative characteristics of the service offered. Therefore, the social safeguard clause is ambivalent with respect to the quality of the service provided. On one hand, it can tend to increase quality. On the other hand, it can reduce it. However, the importance of the contracting public institution is evident. When defining the clauses of the contract, the contracting public institution must have ex-ante ability to provide for specific objective standards for the quality of the service to be provided. While in progress, the institution must have the ability to monitor and evaluate this performance effectively through its own internal organizational capacity.

Company ALFA: *“In the face of potential appeals, the members of the evaluation commissions tend to not expose themselves, to not express great differences between the project proposals and to not make too courageous assessments that could be questionable. As a result, the differences are smoothed out. Furthermore, if there is no formula for the price score that allows to check particular reductions or market excesses, the entire procedure turns into a unique bid auction. If there are no rewards and if monitoring is absent, the company tries to give as little as possible and stay within the thin line of penalties. This is how a service is created with fewer people, with poor products and with an organization that will penalize users. In other words, a low-quality service is created”.*

5. Conclusions and implications on management and policy

The analysis shows that currently the public administration is faced with objectives that may diverge. On one hand, there are interests in obtaining qualitative levels of service that are consistent with user expectations and in containing public spending. On the other hand, there is also interest in protecting the employees of the contracting company who are working in these services to avoid social phenomena of marginalization and underemployment.

Given awareness of the possible distortions derived from the rigid and binding application of the social safeguard clause, the legal orientation in our country in recent years has in fact attributed a certain discretionary decision-making power to the contracting company. By absolutizing the principle of social safeguarding, this approach makes it possible to overcome the conceptions of the past that generated the distortive effects illustrated in this article in a consequential and unintentional manner. However, this new jurisprudential direction assigns to the voice and the negotiation skills of the various organizations the final results of this dynamic. The actors involved are undoubtedly the union representatives of the workers concerned and the new employer (i.e., the winner of the contract). However, there is no doubt that even the contracting public institution, for various reasons, can have some amount of influence in determining the final decisional equilibrium.

In the case of the social safeguard clause, there may be outcomes that seem to be close to a rigid application of this mechanism. To the contrary, there may be employment conditions that are only limitedly confirmed in

the new contract. This will depend on several factors that are highlighted in this article, including:

- Distorting behaviours pursued by the outgoing company in terms of redundancy or lower production capacity of the workers employed;
- Occupational resources of the incoming company, lacking (or not lacking) certain job skills, or having its own pre-existing employment redundancy (or lacking this);
- Competitive pressure exerted by managerial, organizational and technological innovations that can push towards a reduction in the price offered in the contract or an increase in the quality of the service;
- Procuring public institutions that have (or do not have) a specific sensitivity to workers employed in a service; and
- Contracting public institutions with (or without) a technical organizational capacity for the formulation of tender specifications and, above all, in monitoring (and sanctioning) the quality of the service provided.

In a framework with these characteristics, the results of the decision-making process deriving from the application of the social safeguard clause are not discounted and determined. Consequently, we identified highly differentiated market situations among them (Decarolis and Giorgiantonio, 2014). In terms of economic rationality, these factors could generate conditions of strategic operability that are very different for each of the enterprises involved. For example, the "scarce" attention of public institutions to the social safeguard clause could lead to a greater influx of potential competitors to a specific tender; an increased capacity to demand and monitor the quality of the service offered by a public institution (Gabryelczyk *et al.*, 2017) could lead to a more limited application of the social safeguard clause by the incoming company and so on.

In this context, it may be important to outline some possible implications for both management regarding firms involved in these decision-making processes and in relation with public institutions as well as for industrial policy regarding the administrations that intend to improve the management of the social clause.

In relation to the first aspect, companies could strengthen their level of reputation and credibility through the adoption of policies that tend to maintain high employment levels and/or improve the processes of conversion and requalification of human resources. Thus, companies could not only increase the level of professional preparation and satisfaction of staff and consequently their productivity, but they could also obtain recognition from external stakeholders, including the employee representatives of these public administrations. Furthermore, the strategic dynamics that emerge from similar competitive contexts show that it is actually essential for any company, regardless of its size, to implement adequate information systems that can systematically monitor the behaviour of competitors and generate information on which to make appropriate decisions.

In relation to the second aspect, the following policy interventions are suggested:

1. Adopting tools as well as regulatory tools for deterring and avoiding

- the distortionary behaviour pursued by the outgoing company. Thus, it is reasonable to assume that many potential incoming enterprises may be interested in participating in the tendering procedure;
2. Strengthening of the ex-ante ability to define the clauses and rules of the contract. This can be accomplished by establishing centralized contracting authorities in contrast to, for example, scattering these in each individual municipality, which are often much smaller. The aggregation of the contracting authorities could lead to reductions in the overall costs of tenders and greater capacity to monitor the quality provided (Guccio *et al.*, 2014); and
 3. Safeguarding of employment levels in these tenders could be based on reward scales. The company that participates in the contract by drawing up its project specifies the percentage (or other indicators) of absorption of the personnel currently employed (Varva, 2016). Thus, the contracting authority ponders the different offers of potential incoming companies based also on this indicator by giving a specific awarding of points in the ranking. Thus, the public institution "declares" with its own voice the willingness to reward, more or less consistently and indirectly, the personnel currently employed in the contract. Therefore, the latter will feel a competitive "pressure" to work in a motivated and productive manner so the public institution will attribute a relatively high importance to this possible reward in a future tender.

Ultimately, if public institutions are moving towards a less rigid and binding application of the social safeguard clause, this does not mean that the two objectives (price/quality of service and employment safeguarding) cannot be pursued through other policies that are equally relevant. Instead, it is important to note that a clause, namely, that of social safeguarding that was established for highly ethical reasons, may risk activating a distortive dynamic that does not protect the overall interests of workers and the community.

The investigation conducted in this article contributes to the definition of strategic behaviours assumed by enterprises in competitive procedures organized by public institutions; however, it also has some limits. As previously highlighted, this study is an exploratory study that can be broadened by observing a larger number of companies, further developing the topics under investigation, and through the preparation and use of appropriate indicators that could help to outline some aspects that companies still consider as being sensitive. The major limitation involves the nature of the subjects who were involved. In fact, the research only considers the companies' perspectives. To understand the role and the effects of the social clause, it may also be appropriate to define and evaluate the conditions, the points of view and the problems expressed by employees, workers' representatives and public institutions in the future. Each of these perspectives could also be broadened, through the use of a quantitative approach and could lead to original results, thereby presenting new and original pathways for continued research.

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