



## The importance of not making a mistake with the envelope when submitting an offer in a public procurement proceeding

*Case 9/2012, of 4 of December, of the Consultative Commission of Public Procurement of the Board of Andalusia*

### Background

An Andalusian city council called a procurement procedure for the management of home assistance, through an open procedure and based on several awarding criteria. In their offers the bidders had to submit the criteria to be valued through formulas (the software and the economic offer) in envelope B and the criteria to be considered through a technical report in envelope C. When opening envelopes C, the Contracting Committee discovered that all bidders had included the information regarding their software in such envelope C, and not in envelope B. However, the Committee decided not to exclude any of the bidders, considering that as each one of them had made the same mistake, there was no difference in treatment between them. On the other hand, once the technical report had been prepared and the winning offer had been established, during the recount of the scores it was discovered that the bidder that was going to be awarded the tender had included its economic offer in envelope C, and not in envelope B, as the conditions of the tender demanded.

In view of the above, the city council decided to request a report from the Consultative Commission of Public Procurement, in order for such Commission to decide whether the Committee acted properly when it did not exclude all the bidders which had made the same mistake and whether it was legitimate to exclude the bidder that had included its economic proposal in the wrong envelope.

### Report by the Consultative Commission

The Consultative Commission reviews the rules that apply to the submission of offers, which makes it clear that the bidders are subject to the conditions of the tender, especially when dealing with proposals which are valued according to criteria whose evaluation depends on a value judgment. The documents that are to be subjected to this type of assessment must be submitted in an envelope separate from the rest.

According to the Consultative Commission, the inobservance of these rules by the bidders must necessarily lead to the exclusion of their offers, whether it was only one of the bidders who made a mistake or in the case that all bidders have made the same mistake. The Commission reminds us that the Administration is not authorized to modulate the application of the rules according to their level of compliance, and that the Administration is also subject to the provisions established in the tender conditions by itself. The contracting body cannot cease to implement the clauses of the tender conditions, on the basis of a general infringement by the bidders or for reasons of procedural economy, since if it accepts offers submitted incorrectly it would be infringing the rules that govern contracting procedures.

When faced with an incorrect submission of offers the solutions offered by law must be followed, which consist in either the correction of the mistake or the excluding of the offer.