



## Some essential premises regarding the evidence to prove solvency in public procurement procedures

*Resolution of the Central Administrative Court of Public Procurement Appeals of 18 April 2013, resolution No 152/2013*

The resolution of the Central Administrative Court of Public Procurement Appeals at issue had to resolve on a decision that excluded a company from a tender for not having submitted sufficient documentation to prove that it met the economic solvency requirements demanded in the tender conditions.

### Basic premises to prove solvency

From this resolution we should highlight which are the basic premises regarding the accreditation of solvency, according to the Central Administrative Court of Public Procurement Appeals:

- i) the conditions of the tender govern the contract and the submission of the tender proposal implies the unconditional acceptance of the tender conditions. If the appellant did not challenge the conditions, the solvency shall have to be proven according to the evidentiary means demanded in the tender conditions;
- ii) it corresponds to the contracting body to establish the specific evidentiary means to prove the solvency, with the only limitation that such means must be reasonable and appropriate;
- iii) the possibility of rectification is limited to defects and omissions of the documents submitted to prove the solvency, but not to fulfillment of the requirement of solvency itself, that must already take place prior to the date on which the term for the submission of proposals ends. Therefore, the fulfillment of the

requirement cannot be corrected, only the insufficient accreditation of such requirement due to defects or omissions in the documentation.

### To justify solvency with resources of third parties

Article 63 of the recast text of the Public Procurement Law allows bidders to prove their solvency on the basis of the solvency and resources of a third party, regardless of which is the relation between the two parties, as long as the bidder can prove that, for the execution of the contract, it has indeed access to the resources of the third party.

According to the Court the interpretation that must be given to such precept is that the bidder is permitted to prove its solvency through external resources, without any limitation to the way in which such accreditation can be made, which must however always be in accordance with the conditions established by the contracting body.

However, for the Court it is essential that there is specific and indubitable proof that the bidder will have access to such third party resources for the execution of the contract, which means that generic commitments of the third party are not acceptable, but that the commitments must be clear and undisputed, and that specific obligations must be assumed. Moreover, such commitments must be specifically referred to the contract that is subject of the call to tender.