



New criteria for filing administrative appeals against invitations to tenders

Decision by the Central Administrative Court for Contractual Appeals, n° 557/2014 of 18 July 2014

Background

On 19 July 2014, the Central Administrative Court for Contractual Appeals (TACRC) adopted ruling 557/2014 in which it set forth new criteria in connection with how to calculate the term of 15 working days for the purposes of filing a special appeal against invitations to tenders in public procurement procedures.

Since this new special appeal procedure entered into force, the Court considered that when invitations to tenders were made known to interested parties through electronic means, the term of 15 days to file an appeal against such invitations started to count on the last date on which offers could be filed.

This doctrine was based on the idea that the law allowed that interested parties were given access to the invitation either electronically or by sending it to them directly when requested, after knowing about the notice of the tender.

This doctrine was accepted by all administrative courts at national and regional level, with the only exception of the local Court in Andalusia. This Court considered that the term had to be counted from the date on which the invitation to tender was published electronically, because the local rules established that such electronic publication was compulsory, and therefore all interested parties had the possibility of knowing the contents of the invitation as soon as it was published on the website.

The position that the Central Court had taken, on the other hand, created some problems in cases where the appeal against the invitation to tenders was filed after having presented the offer. In these cases, the Court did not accept the appeals because they would contradict the idea that filing an offer equals accepting the clauses in the invitation to tender.

The notice informs about where the invitation to tender may be obtained

In this ruling, the Central Court confirms its new criteria, consisting in that when the publication of the notice of the tender, whether in the official journal or in the EU journal indicates where interested parties may obtain the invitation, whether it is online or offline, the term of 15 working days to file the special appeal will start from the date on which the first notice containing such information was published in the official journal.

According to the Court, as of the moment when the notice lets interested parties know that the invitation to tender may be collected, such interested party has already access to the same and may therefore assess whether it wishes to file an appeal or not.