



Tender specifications cannot grant points to the offering of equipment which is not linked to the subject matter of the procurement contract

Judgement 108/2018, of 10 May 2018, of the Administrative Court of Public Procurement of Andalusia

Introduction

The Administrative Court of Public Procurement of Andalusia has declared null and void the tender specifications for the supply of fluid therapy medicinal products because such specifications established as awarding criteria that, in addition to the supply of medicinal products, bidders should also deliver automated cupboards for storing and dispensing medicinal products, as well as adaptation of clean rooms for their handling.

Appeal against the tender specifications

A Spanish association named “FarmaFluid”, engaged in fluid therapy and hospital parental nutrition, filed an appeal against the abovementioned tender awarding criteria on the grounds that it failed to comply with the legal requirements of connection between the criteria and the subject matter of the procurement contract. The appeal also contested the formula used to grant points to those criteria, because it did not allow to properly identify the requirements for evaluating the criteria.

Judgement of the Court

In relation to the criteria described in the specifications, the Court accepted the arguments of FarmaFluid and considered that such specifications must be annulled because there is no direct link between them and the subject matter of the contract, contravening Spanish rules on public procurement. The Court considered that,

while it is true that the offering of cupboards and adaptation of clean rooms by the bidders may be an advantage in the process of storage, handling and dispensing of the medicinal products, it does not provide a direct benefit to the medicinal products which are the subject matter of the contract. Also, these advantages do not favor the proper execution of the contract, and cannot be considered as accessory elements enhancing the qualities or properties of the acquired medicinal products, because they can also be used for other medicinal products.

In relation to the formula used by the contracting body to assess those awarding criteria, the Court found that, after examining the formula, bidders do not know what they must offer in order to obtain the highest score in the tender. In addition, the Court points out that in case the contracting body grants points depending on the economic contribution offered by the bidders by means of the cupboards and the adaptation of clean rooms, this would lack legal support, since, in that case, the Administration would be financing, without due control, the acquisition of goods which have no direct connection with the subject matter of the contract. For all these reasons, the Court decided to also uphold the appeal in relation to the configuration of the formula.

Having accepted all the arguments of the appeal filed by FarmaFluid, the Court annulled the tender, and instructed the contracting body to restart a new tender procedure with specifications which do not contain the annulled criteria.