



New public procurement models, value has a price tag

Resolution No. 199/2022, of 26 May, of the Central Administrative Tribunal of Contractual Appeals

Defining the purpose of a contract in an innovative manner

A new trend in the public procurement of medicinal products is timidly making headway. Both the industry and the public sector are interested in exploring new formulas to evolve from a traditional model to a new relationship based on different concepts. This would change the role of the industry itself, as it would come to provide solutions and services that complement the supply of the product. This, in turn, would improve the patient's situation, hospital management, or allow for cost reductions. Hence, the industry would act more as a partner than as a supplier. Public procurement would be considered an investment rather than mere expenditure.

At the end of the day, this encourages a redefinition of the purpose of contracts, which would shift from mere supply of products to contracting solutions that create value, thus rendering measurable results that can be remunerated, if necessary under risk-sharing or similar agreements.

These proposals require a change in the culture of the contracting bodies, so that better and different use is made of the mechanisms already available in the Law on Public Procurement to elaborate contracts with a composite purpose, notably mixed contracts.

Price in the case of mixed contracts

In this context, on 26 May, the Central Administrative Tribunal of Contractual Appeals

(TACRC) issued a resolution following an appeal filed by Faus Moliner in the interest of one of our clients. The resolution comes to clarify the rules of the game, thus providing greater legal certainty to all stakeholders.

This was the case of a tender to contract the supply of specific medicinal products, along with a set of logistical services so as to facilitate hospital management and the provision of software for inventory control purposes. However, the contract price was determined solely based on the unit price of the medicinal products.

Tribunal states that, according to the Law on Public Procurement, the price of a contract with multiple provisions (products and services) may be set with reference to only one of the provisions (the product). However, the price of the latter must somehow include, consider or reflect the value of the remaining provisions. In addition, this must be explained in the relevant economic report.

Therefore, the contracting body may set the price of a mixed contract only on the basis of the unit price of the relevant medicinal product. Nonetheless, the corresponding economic report must specify that the remaining services are also being remunerated through the purchase price of the product.