

SPANISH COMPETITION *Highlights...*

Weekly follow-up: 30 Oct - 3 Nov.

The Galician Competition Authority interprets the Public Sector Contracts Law amendments introduced by Law 31/2022, which affect competition.

Law 31/2022, of 23 December, on the Spanish National Budget for the year 2023, by means of its Twenty-seventh Final Provision, with effect from 1 January 2023, amends Law 9/2017, of 8 November, on Public Sector Contracts ("LCSP").

Among its amendments, the one referring to art. 150 LCSP stands out. This article refers to the public procurement procedures in which the administrative body finds substantiated evidences of collusive conduct in contracts subject to harmonised regulation or when companies go to a tender in bidding consortia. The Galician Competition Authority ("CGC") concludes that the administrative body must act as follow:

- 1) Prior to the award of the contract, it is fundamental that the administrative body refers the evidences of collusive conduct to the CGC for the elaboration of a report on whether such evidences are substantiated or not.
- 2) For the issuance of the report, the CGC may request additional information exclusively related to the evidences of that public procurement. The submission of such documentation shall suspend the procedure. However, the suspension shall not be notified or published.

The CGC emphasizes the importance of not publishing the suspension of the procedure in order to avoid alerting potential infringers and enabling them to destroy evidences of their conduct. Any potential destruction of evidences could impact other procedures where there may also exist a collusive behaviour, making it more challenging to initiate a sanctioning procedure. Consequently, publication will only take place when the contradictory procedure is opened and the parties have to submit their allegations.

- 3) The Galician administrative body may request from the CGC such reports as may be necessary for its decision. The decision regarding the continuation of the procedure or the exclusion of bidders depends solely on the administrative body.

Even when this procedure is not applicable, the administrative body have the obligation, under art. 132 LCSP, to formally report to the CGC any infringement of competition law in the procurement procedure.

It is increasingly frequent for competition authorities to initiate proceedings on the basis of referrals made by administrative bodies on evidences of collusive conduct.