



## **LAW 9/2017, OF NOVEMBER 8th, OF CONTRACTS OF THE PUBLIC SECTOR**

On November 9th, 2017, **Law 9/2017** about Contracts of the Public Sector (the "Law 9/2017") was published in the BOE, through which the European Directives 2014/24 / EU of February 26, 2014 on public procurement and Directive 2014/23 / EU, of February 26, 2014, regarding the awarding of concession contracts are implemented into Spanish law. This law will come into force on March 9, 2018.

**The objectives** that inspire the regulation included in the Law are to achieve greater transparency in public procurement, and to achieve a better value for money. In order to achieve this last objective, the law establishes the obligation of the contracting bodies to ensure that the design of the award criteria is able to obtain high-quality works, supplies and services, specifically through the inclusion of qualitative, environmental, social and innovating aspects linked to the purpose of the contract.

The legal system of public procurement established in Law 9/2017 seeks to clarify the current regulations, in the interest of more legal security and to try to ensure that public procurement is used as an instrument to implement both European and national policies on social, environmental, innovation and development, promotion of SMEs, and defense of competition.

The Law in turn seeks to design a more efficient, transparent and comprehensive public procurement system, through which better compliance with public objectives is achieved, both through the satisfaction of the needs of the contracting bodies and through the improvement of the conditions of access and participation in public tenders of economic operators, as well as through the provision of better services to users.

Likewise, the new Law seeks to satisfy the need for simplification of procedures with the idea of reducing the administrative burdens of the economic operators, thus benefiting the bidders as well as the contracting bodies.

The main novelties of Law 9/2017 are the following:

- The extension of the subjective scope of application of the Law in order to include entities not subject to the previous regulations. As a result, political parties, trade union organizations and business organizations, as well as foundations and associations linked to any of them, have been included in the scope of application of the Law, provided that certain circumstances are met.
- Inclusion in public contracts of environmental, social and innovation and development considerations within the scope of application of the Law.
- Disappearance of the figure of the public service management contract and appearance in its place of the new figure of the concession of services, which is added within the category of concessions to the existing figure of the concession of works. For this type of concession contract to occur, there must necessarily be a transfer of the operational risk from the Administration to the concessionaire, delimiting the cases in which the concessionaire will be considered to assume said operational risk.
- The Law establishes the obligation to split large contracts into lots, makes the solvency requirements more flexible to the characteristics and circumstances of the companies and no longer requires companies with less than five years to evidence prior work as before.
- The incorporation of the regulation of preliminary market consultations in the preparation of contracts, in order to correctly prepare the bid and inform economic

operators about the recruitment plans of the corresponding body and the requirements to attend to the procedure.

- In the area of award procedures, the creation of the figure of the simplified open procedure, applicable up to certain thresholds, and born with the aim of becoming a very agile procedure that by its design should allow the contract to be awarded within one month of the call for tenders.
- The inclusion of new rules aimed at promoting transparency in contracts, independently of the rules designed to facilitate the fight against fraud and corruption.
- A new regulation of the profile of the contracting party, more exhaustive than the one existing up to now, which gives it a leading role as an advertising tool for the different acts and phases of the processing of the contracts of each entity, as well as the regulation of the Registry of Contracts of the Public Sector, in which all the contracts awarded by the public sector entities will be registered.
- Maintaining the use of the responsible declaration with the aim of simplifying and reducing administrative burdens, broadening the range of cases in which it is used and regulating its content in detail with the form of the European Single Contracting Document approved by the European Commission.
- Bet in favor of electronic contracting, generalizing its use in all phases of the contracting procedure.
- Measures to support SMEs, such as measures to simplify the procedure and reduce administrative burdens, with the aim of giving a boost to companies.
- New measures to defend competition, such as the obligation to provide the National Commission of Markets and Competition with more information on public procurement.

In case you need more information, we would be happy to help you.