



Ref: MCR/SCh

Department: LEGAL ADVICE

File number: CPSV2019000005

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Subject: Clarify and amend the Bases of the International Project Contest for the new urban center space resulting from the underground of the railways in Sant Feliu de Llobregat.

Given that by agreement of JGL dated April 10th 2019, the Regulatory Bases of the International Project Contest for the new urban center space resulting from the excavation of the railways in Sant Feliu de Llobregat were approved, being that the same they were published in the profile of the contracting party on 04/30/2019 and in the DOUE on 04/26/2019, and establishing a term for submission of tenders that ends on 06/11/2019.

In view of clause 13, section 13.1.1, which establishes in relation to the economic and financial and technical and professional solvency that will be accredited as follows: "In the case of the professionals, be in possession of a professional risk indemnity insurance certificate issued by the insurer for an amount equal to or greater than € 100,000, valid until the end of the bidding submission period, as well as the commitment of its renewal or extension, to guarantee maintenance of its coverage throughout the execution of the contract subsequently formalized. "

Given that the bases do not mention the form of accreditation of the economic and financial solvency for legal entities, in this regard it is considered necessary to clarify that for both professionals and legal entities the economic and financial solvency may be accredited by means of a certificate of insurance for professional risks or alternatively by annual declaration of turnover in accordance with article 87 section a) of the law 9/2017, of November 8th, of Contracts of the Public Sector, for that the European Parliament and Council Directives 2014/23 / EU and 2014/24 / EU of 26th February 2014 (LCSP) are transposed into the Spanish legal system.

As Clause 13, section 1.1 would read as follows: "*Economic and financial solvency will be proven **alternatively through the following ways:***

- *For professionals or legal entities, be in possession of a certificate of compensation insurance for professional risks issued by the insurer for an amount equal to or greater than 100,000 euros, valid until the end of the period for presentation of tenders, as well as the commitment of its renewal or extension that guarantees the maintenance of its coverage throughout the execution of the contract that is subsequently formalized.*
- *For professionals or legal entities, declaration of the annual volume of business in accordance with article 87.a of the LCSP. "*

Taking into account the provisions of article 122 of Law 9/2017, of November 8th, on public sector contracts (LCSP) in relation to the modification of the folds of particular administrative clauses, and article 109 of the Law 39/2015 of October 1st, on the common administrative procedure of public administrations, in relation to the material errors of the administration in which it is determined that the public administrations may rectify at any time on their own initiative or at the request of the interested parties, the material, in fact or arithmetic errors that exist in their acts, being that in this case it is a modification of an element linked to the solvency, not essential and that it does not affect the licensing



procedure, being that to date Today, no offer has been submitted, and otherwise, a reasonable period of time would be granted for the contestants to adjust this circumstance and for this reason it is considered not necessary, extend the deadline for submission of tenders. However, it should be pointed out that this amendment is not affecting the principle of equality, nor does it have free competition or are discriminatory, albeit to the contrary. With the solvency requirements proportional to the object of the contract and its amount as established by the central Administrative Court of contractual resources, in resolution 135/2018 of February 9th, 2018.

In view of the second additional provision of the LCSP, in relation to the jurisdictional attribution, in the Decree of Mayorship with reference 2015/1970, dated July 8, 2015, of delegation of powers of a resolutive nature to the Local Government Board and the budget execution bases, the Mayor, using the powers that I have granted by the current legislation,

I RESOLVED

FIRST.- Clarify and amend section 13.1.1 of clause number 13 of the Bases of the International Project Contest for the new urban center space resulting from the burial of the railroad tracks in Sant Feliu de Llobregat approved by agreement of the Local Government Board dated April 10, 2019, for the aforementioned reasons in the part exposed of the present Decree,

Where it says,

[...]

13.1.1 Economic and financial solvency

The economic and financial solvency will be credited **in the following way:**

- *In the case of professionals, be in possession of a professional risk indemnity insurance certificate issued by the insurer for an amount equal to or greater than 100,000 euros, valid until the end of the submission period of bids , as well as the commitment of its renewal or extension that guarantees the maintenance of its coverage throughout the execution of the contract that is subsequently formalized.*

[...]

It has to say:

[...]

13.1.1 Economic and financial solvency

The economic and financial solvency will be **alternatively through the following ways:**



- *For professionals or legal entities, be in possession of a certificate of compensation insurance for professional risks issued by the insurer for an amount equal to or greater than 100,000 euros, valid until the end of the period for presentation of tenders, as well as the commitment of its renewal or extension that guarantees the maintenance of its coverage throughout the execution of the contract that is subsequently formalized.*
- *For professionals or legal entities, declaration of the annual volume of business in accordance with article 87.a of the LCSP.*

[...]

SECOND.- Make it clear that in case there has been an offer, at the moment it is detected, if it were the case, the lack of accreditation of the economic and financial solvency, at the corresponding moment the contracting body will be required to its contribution and remedying within three business days.

THIRD.- Publish this Decree to the Contractor's Profile, modify the new Rules governing the contest and proceed to its translation in Spanish and English.

FOURTH.- Take note of this resolution at the next session of the Local Government Board held.

I command and sign, in Sant Feliu de Llobregat to the indicate date.

The Mayor

Jordi San Jose Buenaventura

[Signature02-01]

I attested

The Secretary

Agustín Recio Romero

[Signature01-01]