



Now that eight-year contracts for certain Formentera beach plots have been provisionally granted, the Formentera Island Council wishes to inform the local population of how the process was executed and of the circumstances that marked the course of events.

It is an instance of temporary authorisation that allows for contract-requests by third-parties for certain portions of the stipulated 48-plot ensemble, and circumstances this year were such that the Formentera Island Council opened a percentage of these contracts for bidding. The process is effectuated annually and – as stipulated by the Coastal Law – applications are handled by the Balearic Islands Coastal Demarcation from one year to the next. This aspect stands as proof that – in addition to other elements – it is a process based on completion of regulations derived from the Coastal Law, and that the rights and privileges in question are not unlimited nor absolute, the issue at hand being one of Land and Sea Public Domain.

Every public licitation of bids that the Administration oversees – and the current case is such an example – is founded on the Royal Legislative Decree 3/2011 of 14 November, which regulates the adapted text of the Law on Public Administration Contracts. This text is itself derived from the communitary principles established by the Treaty of the European Union and Directive 2004/18/CE, which regulates awarding procedure for public contracts, as does Directive 2006/123/CE of Services. The manifest principles of these regulations are free market

competition, freedom of bidder access, publicity and transparency of proceedings and equality in treatment of bidders.

Thus, what is colloquially known as “seniority” is considered under the aforementioned regulations to be a minimum requisite in the accreditation of technical and professional solvency of bidders. This facet is treated by Article 78, stating the following: “in service contracts, technical or professional solvency must be appreciated in terms of technical knowledge, efficacy, experience and reliability, accredited thusly: based on the principle services and employment realised over the course of the previous three years(...)”. Likewise, other existing jurisprudence states that “a favouring of bidders that are already established in the area, or awarding of points based on bidder experience, is prohibited. It must be understood that every bidder fulfilling the accreditation of required technical solvency shall be considered equally able in the execution of a contract, and, by consequence, the awarding of contracts must be based on other criteria”.

With respect to the number of envelopes that must be presented in the application process and to the time that must elapse between the opening of each, the fact that the awarding of contracts is determined by the presentation of four different envelopes is – in keeping with the relevant laws – based on a system that favours service quality and quality of the technical proposal over a system whose sole criteria is based on maximum prices. In coherence with our policies of environmental conservation and those of adaptation to the natural characteristics of our local environment, a set of scoreable criteria was promoted that would be applied towards Article 150 of Royal Legislative Decree 3/2011: integration of local with surrounding area, energy efficiency, waste minimisation, waste management and beach beautification, among others.

In the particular case of the beach-front bars, economic criteria account for a maximum of 35% of the 100 point total, while technical criteria amount to 55%, and improvements to a service's environmental impact, 10%. In the case of beach-front lounge chairs and hammocks, watersports schools and contracts for similar enterprises, the maximum number of points is 65 to be divided up in the following proportions: 35%, the economic value of an offer, 20%, the technical value and 10% with respect to improvements to a locale's environmental administration.

The schedule for the opening of envelopes is established by the Regulations on the Law on Public Administration Contracts, approved by Royal Decree 1098/2001 of 12 October. These dates were upheld despite the Council having received a total of 108 applications for a total of 48 plots, and despite the fact that some of the business proposals were sent via e-mail, a factor

which slows down processing considerably. All of these factors must be added to the fact that the workers involved had just three plenary sessions over which to review applications, after which a minimum period of 15 calendar days of public exposition in the BOIB (Official Gazette of the Balearic Islands) was upheld.

With respect to the different deadlines, the Formentera Island Council heeded the requests of the concessionaire's collective and extended concession periods to a length of eight years, which meant an increase in individuals competing for spots, doubling compared to the previous round of applications, held in 2009. This was another factor that contributed to the lengthening of the contracting committee's application review period.

As for the measures to be applied in the case of draws – outlined in the regulations devised to this effect – established-practise was applied. This meant that if more than one applicant came to a draw, it would be resolved by favouring whichever party met a minimum of 2% of staff with disability. In the case at hand, both the companies in question had signed commitments to this effect. In the second instance, if two contenders remain at a draw, a new application review is undertaken, favouring whichever party presents a proposition that displays greater public interest. In the present case, this was criteria that the contracting committee was unable to appreciate. Thus, in the final instance, the final legal prevision is a public drawing of lots.

A significant part of the information being propagated – on one side by representatives of different groups and on another by word of mouth – might have its origin in an ignorance of the legal and technical characteristics at use in the context of the beach-front concessions and temporary authorisations. Given the important effect that these services have on our local economy, to avoid controversy, it is necessary to explain and account for all the political and administrative acts that our institution has overseen.

The Govern of the Council is conscious of the importance of starting the tourist season in optimal conditions and with services opened already in May, and for this reason, insofar as established deadlines permit, we try to facilitate proceedings for applicants. The aforementioned circumstances this year produced an unfortunately inevitable delay in administrative proceedings and, though discontent surrounding the issue is legitimate, accusations regarding the transparency of the contracting process itself, or still others alleging indifference or a lack of local implication are completely unfounded.

The Formentera Island Council has at every point in time acted with the utmost clarity in

proceedings, full technical objectivity and absolute political neutrality, as demanded by Articles 103.1 and 3 of the Constitution of the Spanish State and by equivalent precepts of the Statute of Autonomy of the Balearic Islands.