

SPANISH PROCUREMENT

New legislation to revamp bidding rules

The jury is still out on what Spain's new procurement law will mean for much-needed private sector investment, particularly in wastewater treatment.

Under time pressure from Brussels to comply with EU law, Spain's minority conservative administration has been forced to accept significant changes to its new legislation on public sector contracts, which was finally approved at the end of October.

Amendments introduced by opposition parties will make Spain's public procurement process more transparent and accessible, cutting down on corruption and encouraging competition, according to Unidos Podemos parliamentarian Josep Vendrell.

"The entire public sector is now covered by the law, meaning that public sector companies like Acuamed can no longer make their own contracting regulations, and all documentation relating to the procurement process will be in the public domain," he told GWI.

Under the new law, abnormally low bids can be rejected more easily, and quality – rather than price – will be the principal criterion for awarding contracts. Although this suggests that the cost of public procurement will rise, Vendrell argues that, on a net basis, this need not necessarily be the case. "The initial price bid is one thing, and the final price paid is another. With corruption, the cost for the public as a whole was too high, and a change of culture was needed."

Nevertheless, José Carbonell, president of the Spanish water operators' association AGA, said that making the legislation tougher could mean making public sector contracts more expensive. "Once reality makes itself felt, bidders will certainly change their approach," he predicts.

Carbonell also maintains that the new law could discourage private sector investment, because "its wording was heavily conditioned by the failure of motorway concessions. The legal liabilities of public administrations have been limited, allowing them to terminate contracts more easily and to transfer more risk to concession-holders, who will be required to bear cost variations resulting from errors committed by public authorities," he told GWI.

For lawyers Irene Fernández and Carlos Vázquez, speaking for the PPP lobby group Foro Infraestructuras, the law provides new opportunities for private sector investment

in water because it allows public administrations greater flexibility.

"It blurs the line between a service contract and a concessional contract, permitting more to be done under a service contract," according to Fernández.

While the new law does make the terms of concessional contracts more rigid (the maximum duration of service contracts has been reduced from six years (based on an initial four-year term extendible by two years) to a hard cap of five years, these limits can be extended when justified by the need to recover investments. This means that "BOTs without transfer of risk will now be possible using service contracts," she explained.

The PPP model used by the regional government of Aragón for building WWTPs – which resulted in a number of failed concessions – "was flawed because of the transfer of risk. It would have worked better with service contracts over fifteen years," she maintained.

Carlos Vázquez pointed out that PPPs have generally worked better in Latin American countries because "they have formulas with a lot of flexibility." In Spain, "given the EU regulatory framework, we

need instruments which allow us to do things outside the concession," he said.

Both lawyers questioned the likelihood of the new law pushing up public procurement costs, given that public administrations will now have the option of choosing whether they want to have their risks covered via a full concessional contract or of seeking a cheaper alternative via a service contract over an extended period. "They can't expect contracts to be cheap and to have their risks covered," said Fernández. "There will also be more competition, because rules preventing abnormally low bids and requiring tenders to be split into lots will allow small and medium-sized firms to compete," she added.

While views differ on the impact of the new law on the costs and incentives for private sector investment, there is a consensus that it may prove complicated to apply in practice.

For one thing, the new restrictions on the widespread practice in Spanish public sector procurement of submitting an extremely low bid and then modifying the price following the award of the contract could increase the frequency with which contracts have to be retendered. ■

WATER IN CATALUNYA

Catalunya water escapes contagion

Despite the rhetoric from Madrid around the economic value destruction caused by the independence campaign, the water sector is functioning as normal – for now.

The water sector seems little affected by the Spanish government's rhetoric around the negative impact that the campaign for independence is having on the Catalan economy, as it seeks to boost the unionist vote ahead of December's elections.

Spanish economy minister Luis de Guindos last month blamed the decision by numerous Catalunya-based companies – including Suez subsidiary Agbar – to relocate their headquarters on "the irrationality and radicalism of policies adopted by the Catalan government."

The Catalan government responded by that saying inward investment had

increased by 20.6% year-on-year in the first half of 2017.

The central government has since removed and imprisoned Catalan ministers and imposed direct rule from Madrid to "re-establish the rule of law", but the day-to-day running of the public administration appears to have been largely unaffected.

José Carbonell, of the Spanish water operators' association AGA, told GWI: "Fortunately the administration is continuing to function pretty normally from a technical and administrative point of view, but if the current situation persists, things could change". ■