

Mining Law
Update

The Supreme Court declares that public procurement law applies
subsidiarily and complements the regulations governing mining tenders

15th November 2019

Regarding the Supreme Court's Judgment of October 22, 2019

The Supreme Court has confirmed that mining tenders are competitive bidding procedures subject to mining legislation and public procurement rules (Supreme Court Ruling October 22, 2019).

In this case, the Junta de Andalucía filed an appeal against the ruling that annulled the award of various mining permits because they contained valuation criteria contrary to law (Judgment of the High Court of Justice of Andalusia of 5 September 2017). The Supreme Court upheld the cassation appeal and declared it to be of domestic interest to determine whether contract legislation is complementary and/or supplementary to mine legislation and, in particular, whether the regulations on evaluation criteria for bids in public sector contract tendering procedures are applicable to mining tenders.

The Andalusia High Court of Justice, based on the application of public procurement rules and the general principles that inspire it in accordance with the case law of the ECJ, **had annulled those criteria that were contrary to the principles of equal treatment and transparency of the procedure**, as the Bureau had set weighting coefficients and sub-criteria *a posteriori*, **without having been previously known by the bidders**.

The Regional Government of Andalusia disagreed with the application of the rules on contracts and asked the Supreme Court whether these rules are complementary and/or subsidiary to the legislation on the public domain of mining and, in particular, "*whether the rules on criteria for evaluating bids are applicable in mining tenders [...]*". In order to settle this question, the Supreme Court analyses the procedure for awarding permits (article 72 of Royal Decree 2857/1978, of 25 August, approving the General Regulations for the Mining Regime applied to the case under trial):

- i. The mining right is awarded by invitation to tender (Article 72(1) of the Regulation);
- ii. Following the invitation to tender, interested parties may submit bids for research on the land in question;
- iii. The Bureau selects the bids that contain the best technical, economic and social guarantees and conditions in relation to the research requested (Article 72.2 of the Regulation).

The judicial body determines, after an analysis without much depth, that we are before a procedure of **competitive concurrence**. On this premise, the Supreme Court concludes that the Public Sector Contracts Law and the essential principles of contracting apply subsidiarily in this area, especially considering that the Mining Law "*is more than 40 years old*".



Consequently, the mining sector will be directly affected by this pronouncement, since from now on **the Public Administrations will have to extreme diligence in the application of the principles of concurrence, equality of treatment and transparency in the awarding of mining permits, whether for research or exploitation, applying the criteria that until now have been proper and exclusive to public procurement regulations.** Through this pronouncement, the Supreme Court suddenly "updates" the mining regulations. The almost eternal debate on the necessary amendment of the 1973 Mining Act is, at this point, overshadowed. The decision of the High Court replaces the inaction of the legislator and updates the mining regulations, subjecting the traditional mining procedures to the modern canons of legality of public procurement.

For more information, you can contact our experts in Mining Law:

[Carlos Mínguez](#)

carlos.minguez@andersentaxlegal.es

[Carlos Morales](#)

carlos.morales@andersentaxlegal.es