

**Opinion in relation to a query on compliance with the advertising obligations established in the Public Sector Contracts Act**

**A letter from (...) is submitted to the Catalan Data Protection Authority on compliance with the advertising obligations established in the Public Sector Contracts Act and its compliance with the personal data protection regulations .**

**Having analyzed the request, and seen the report of the Legal Counsel, the following is ruled.**

**I**

**(...)**

**II**

**(...) states, in his consultation letter, that Law 9/2017, of November 8, on public sector contracts, by which the Directives of the European Parliament and of the Council 2014/23/UE and 2014/24/UE, of February 26, 2014 (hereafter, LCSP), contains several provisions relating to the obligation to advertise, through the contractor's profile, to a large number of actions and documents relating to public procurement procedures (articles 63 and 154).**

**Next, it should be noted that most of these documents contain the name, surnames and NIF of the tenderers or those awarded the contract or, in the case of legal entities, the persons acting on their behalf, as well as the personnel at the service of contracting bodies.**

**Given this, he states that he has doubts about the existence and publication on the Internet of these personal identifying data incorporated in the documents (either in the text itself or in the electronic signature).**

**For this reason, it requests the opinion of this Authority on the most appropriate way to comply with the advertising obligations established in the LCSP and, at the same time, to respect the right to data protection of those who may be affected.**

**We refer to these issues in the following sections of this opinion.**

**III**

**Article 63 of the LCSP establishes the obligation of contracting authorities to disseminate their profile of the contractor through the Internet "as an element that groups information and documents related to their contractual activity in order to ensure transparency and public access to them" (section 1).**

**This profile of the contractor must publish, among other information:**

**"3. In the case of information relating to contracts, at least the following information must be published:**

a) The memorandum justifying the contract, the report of insufficiency of means in the case of service contracts, the justification of the procedure used for its adjudication when a procedure other than open or restricted is used, the list of particular administrative clauses and the of technical prescriptions that must govern the contract or equivalent documents, as the case may be, and the file approval document. b) The detailed object of the contract, its duration, the basic tender budget and the award amount, including Value Added Tax. c) Announcements of prior information, call for tenders, award and formalization of contracts, announcements of modification and their justification, announcements of project contests and results of project contests, with the exceptions established in the rules of negotiations without publicity. d) The media through which, where applicable, the contract has been advertised and the links to those publications. e) The number and identity of the bidders participating in the procedure, as well as all the minutes of the procurement board relating to the award procedure or, in the case of the board not acting, the resolutions of the corresponding procurement service or body, the assessment report of the quantifiable award criteria by means of a value judgment of each of the offers, where appropriate, the reports on the offers incurred in the presumption of abnormality referred to in article 149.4 and, in any case, the contract award resolution.

Likewise, the decision not to award or conclude the contract, the withdrawal of the award procedure, the declaration of desertion, as well as the interposition of resources and the eventual suspension of contracts due to the interposition will also be subject to publication in the contractor's profile of resources.

4. The publication of information relating to minor contracts must be carried out at least quarterly. The information to be published for this type of contract will be, at least, its object, duration, the award amount, including Value Added Tax, and the identity of the awardee, ordering the contracts by the identity of the awardee.

Those contracts whose estimated value was less than five thousand euros are exempt from the publication referred to in the previous paragraph, as long as the payment system used by the adjudicators was the cash advance or another similar system to realize lower payments

5. The annulled procedures, the composition of the procurement boards that attend the procurement bodies, as well as the designation of the members of the committee of experts or of the technical bodies must be published in the contractor's profile. specialized for the application of award criteria that depend on a value judgment in the procedures in which they are necessary.

In any case, the position of the members of the recruitment boards and expert committees must be published, not allowing generic or indeterminate allusions or that refer only to the Administration, organism or entity they represent or in which they provided their services services

6. The formalization of orders with own means whose amount was greater than 50,000 euros, excluding VAT, will also be subject to publication in the contractor's profile.

The information relating to orders of more than 5,000 euros must be published at least quarterly. The information to be published for this type of order will be, at least, its object, duration, the applicable rates and the identity of the medium itself the recipient of the order, ordering the orders by the identity of the medium itself. (...)."

And, according to article 154.1 of the LCSP itself, the awarded contract must also be published. Specifically, this article provides that:

"1. The formalization of the contracts must be published, together with the corresponding contract, no later than fifteen days after the completion of the contract in the contractor profile of the contracting body. When the contract is subject to harmonized regulation, the notice of formalization must also be published in the "Official Journal of the European Union". (...)"

It should be borne in mind that, in accordance with Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), the dissemination of personal data that may contain information relating to public procurement procedures subject to publication on the contractor's profile in accordance with these LCSP precepts must, in any case, comply with the principle of data minimization.

Article 5.1.c) of the RGPD provides, in this sense, that:

"1. The personal data will be:  
(...) c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("minimization of data"); (...)"

Consequently, and in view of the terms in which this query is formulated, in a case such as the one under examination, it will be necessary to ensure that only the personal identifying data included in the aforementioned information is disseminated that is strictly necessary to achieve the purpose of transparency required by the norm.

In this sense, and according to the provisions of article 63.3 of the LCPS itself, it seems to be inferred that, in the context of public procurement, what becomes essential in terms of transparency is the publication of the identity of the people who have turned out to be the awardees - even the other bidders - of a public contract, given that otherwise it would not be possible to effectively control the contract award process and, therefore, the management of public resources. And this, it must be said, regardless of whether they are legal entities or natural persons (in the case of individual entrepreneurs and liberal professionals). In fact, being natural persons, it must be taken into account that it would, in any case, be information related to their economic or professional sphere, as tenderers or awardees of contracts tendered by the public administration.

Being clear, therefore, the need for the publication of this information to achieve the purpose of transparency intended by the LCSP, the main issue focuses, from the point of view of data minimization, on determining what the data are relating to the "identity" of these awardees and bidders that could be the subject of dissemination for that purpose.

And, in this sense, it is understood that it would be sufficient to publish their first and last names, without adding any other identifying information (the LCSP itself serves as an example, which, when providing for the publication of the decision to award the contract in the profile of the contractor, it only requires the publication of the name of the successful tenderer (article 151.2.c)).

That is to say, the publication of the DNI number, NIF or equivalent identification document of the affected persons, for the purposes of transparency, would be unnecessary and, therefore, contrary to the principle of minimization. And this in order to provide this data to citizens (addressee

of the information that must be published in compliance with the duties of transparency), which in principle does not know it in advance, does not provide any additional element when identifying the awardees (or bidders) of a public contract (this objective is equally achieved with the knowledge of their first and last names). On the contrary, it can lead to serious damage for the people affected, in case of subsequent misuse of this data by third parties (it must be borne in mind that, although it is not a recommended practice, often the number of DNI/NIF is used as an identification mechanism to access certain applications or certain services).

This Authority has come to state (see, among others, CNS 4/2018 or CNS 56/2017, available on the website <http://apdcat.gencat.cat/>) that this type of publication of identifying data (joint dissemination of the name, surnames and DNI/NIF) could only be justified for the purposes of achieving the purpose of notification of administrative acts to the persons interested in the yes of certain administrative procedures, although in case of coincidence of names and surnames between interested parties and limited to the last four digits of the DNI/NIF number.

Regarding this, the recent Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (BOE no. 294, of December 6, 2018), establishes that:

"Seventh additional provision. Identification of those interested in notifications through announcements and publications of administrative acts.

1. When it is necessary to publish an administrative act that contains personal data of the affected person, he will identify himself by means of his name and surname, adding four random numerical digits from the national identity document, foreigner's identity number, passport or equivalent document. When the publication refers to a plurality of those affected, these random figures must be alternated.

When it comes to notification through announcements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, the affected person will be identified exclusively through the full number of your national identity document, foreign identity number, passport or equivalent document.

When the affected person lacks any of the documents mentioned in the two previous paragraphs, the affected person will be identified solely by means of their number and last name. In no case should the number and surname be published together with the full number of the national identity document, foreign identity number, passport or equivalent document.  
(...)."

In view of this provision, therefore, it is clear that under no circumstances should the first, last names and full ID number or equivalent document of those affected (in this case, the bidders and successful bidders) be published together or, as the case may be, of the person acting on their behalf).

#### IV

On the other hand, as pointed out in the consultation, in the information related to the public procurement process that must be published in the contractor's profile, in addition to including the identity of the bidders and the successful tenderer, it will also contain the personal information of the public workers who intervene because of their position or functions.

Bearing in mind that the objective of transparency is, in this case, to make known to the citizen information relating to the activity of the administration in matters of contracting (that is, information about what the administration does, how it does, who does it and on the basis of what he does), it is understood that, in this context, it is relevant that the citizen can identify the person who, in the exercise of their functions, has intervened in the public procurement procedure referred to treat

Point out, at this point, that Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), provides, in general, that the citizen can be provided with "merely identifying data" of the people who have intervened in files due to their functions, as long as it is data that is related to the organization, operation or public activity of the Administration and is strictly necessary for the exercise of these functions (article 24.1)).

For its part, Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPACAP), recognizes the right of interested parties to identify the authorities and staff at the service of public administrations under the whose responsibility the procedures are processed (article 53.1.b)).

In view of this, and for the purposes of facilitating this "identification" of the official or public employee, it is understood that it would be sufficient, in this case, to publish his name and surname, information that could be completed with the indication of his position or position of work and the administration or entity to which it belongs. In fact, the publication of the "charge" is expressly provided for in the case of members of recruitment committees or members of expert committees (article 63.5 LCSP).

This, without prejudice to the fact that there may be a specific case in which, finding the public employee in question in a particularly vulnerable situation, it is advisable to avoid revealing the place where he works and the position he holds.

Therefore, it must be borne in mind that the disclosure of other personal identifying data of public employees that may be included in the documentation related to a public procurement process, such as their ID card or handwritten signature, would be contrary to the principle of data minimization, as it is data that is not strictly necessary to be able to carry out this identification.

v

In view of these considerations, and given the terms in which the consultation is carried out, it would be necessary that, prior to the dissemination of the information on the administrative recruitment procedures through the corresponding contractor profiles, it should be removed from the text of the documents any personal data other than the name, surname and, where appropriate, position of, as the case may be, the awardees, bidders or signatories (that is, the DNI number, NIE or equivalent document or the handwritten signature).

Likewise, it would be advisable to expressly state this circumstance in the contractor's profile, or in the Public Procurement Services Platform where these profiles are hosted.

In the case of electronically signed documents, it should be noted that, as this Authority has highlighted on previous occasions (among others, in opinions CNS 9/2017, CNS 17/2017 or CNS 23/2017, available on the website <http://apdcat.gencat.cat/>) and, especially, in the opinion CNS 17/2017 (to which we refer, in case you want to have more information on this matter), when signed

electronically a certain document through the public worker certificate issued by a certain certification body personal information of this worker is accessible to those people who have access to said document. Usually, in attention to the configuration of these certificates, you can have access to the name, surname, DNI, position and entity to which the worker belongs, among other information.

Taking into account that the intended purpose with the incorporation of said signature is related to the right of those interested to identify the authorities and personnel at the service of the public administrations under whose responsibility the procedures are processed (article 53.1.b) LCAPAP) and that, as seen, to achieve this purpose it would be sufficient to provide the name, surname and title (Article 5.1.c) RGD), it should be noted that the publication of these electronically signed documents in the contractor's profile does not would conform to the principle of data minimization.

For this reason, it is proposed:

**Option A:** Evaluate the advisability of carrying out the publication of the documents, for purposes of transparency of the contractual activity of the public administrations, without incorporating said signatures.

**Option B:** If you want to keep the electronic signature visible, publish an "image" of the document in question (not the document in its original format) in which, as data of the person signing, only the name, surname and position For this purpose, it would be necessary:

1. Define the appearance of the public worker's signature in such a way that only the data relating to the name, surname and position are "visible".

It should be borne in mind that the appearance or image of a signature based on a certificate is something that can be pre-defined a priori through the options offered in this regard by the program used to sign electronically (for example, Adobe Acrobat) , so the data of the public worker that are incorporated in the electronic certificate do not necessarily have to be visible once the document has been electronically signed. The visibility or not of this personal data will depend, therefore, on the way in which the format of said signature has been pre-established. And this regardless of the type of electronic certificate that the worker has.

Thus, in relation to the new qualified certificates for public workers, in which, following the parameters established by the Ministry of Finance and Public Administrations, in order to adapt to Regulation (EU) 910/2014 of the European Parliament and the Council, of July 23, 2014, relating to electronic identification and trust services for electronic transactions in the internal market, the name, surname and DNI data of the worker are incorporated together in the Common Name field of certificate - therefore, showing this field in the image of the signature would spread excessive data (DNI) - it would be necessary to create a new aspect of this signature in which only the name, surname and position data would be incorporated .

2. Convert the document to be published to "image" format (for example, by scanning it).

It should be kept in mind that changing the appearance or format of the signature image does not actually prevent "access" to the signer's personal information that is included in the configuration of their public worker certificate. This information - which could only be modified by the certification service provider - is accessible through the consultation of the signature properties. However, if the document is published in format

**"image" removes the possibility of accessing these properties of the certificate and, therefore, the worker's ID.**

**In accordance with the considerations made so far in relation to the query raised, the following are made,**

### **Conclusions**

**In the publication of information relating to public procurement procedures as a result of compliance with the transparency obligations established in the LCSP, the dissemination of personal identifying data should include only the first and last names of bidders and successful bidders, as well as the name, surname and position of the public worker who intervenes because of the position or functions, this being the minimum information necessary to achieve the intended purpose (Article 5.1.c) RGPD).**

**In order to avoid the dissemination of unnecessary personal identifying data in the publication of this type of document, it is recommended to take into account the observations made in section V of this report.**

**Barcelona, January 29, 2019**

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