

Modernisation and efficiency of the european and national rules on public procurement, Brussels, 21.6.2012

The Law on public procurement in the Region of Aragón



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¿Qué es el Observatorio de Contratación Pública?

La contratación pública representa aproximadamente el 18,5% del PIB de España. En los dos últimos años, la regulación jurídica de esta materia ha sufrido numerosas modificaciones, algunas de importante calado, para adaptarse tanto a la situación de crisis económica como para cumplir con las exigencias del Derecho europeo. En este escenario nace el Observatorio de Contratación Pública.

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OPINIÓN & ANÁLISIS

El caso de las mejoras manifiestamente mejorables

Antonio Arias Rodríguez
Síndico de la Sindicatura de Cuentas del Principado de Asturias.



El autor, desde su blog fiscalizacion.es, resume el Informe de Fiscalización de la contratación celebrada durante el ejercicio 2008 por las Entidades del Sector Público Estatal sometidas a la legislación de contratos de las Administraciones Públicas



Efectos de la declaración del concurso en los contratos con las Administraciones Públicas:

Rosario P. Rodríguez Pérez
Jefa de Servicio de Coordinación Administrativa. Consejería de Educación, Cultura y Turismo. Gobierno de La Rioja

NOTICIAS

Entrada en funcionamiento del Órgano Administrativo de Recursos Contractuales de Cataluña

16/06/2012

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Baleares: Novedades en materia de clasificación empresarial

16/06/2012

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El Gobierno de Navarra no revisará al alza el IPC en los nuevos contratos prorrogables o plurianuales.

15/06/2012

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OBSERVATORIO DE JURISPRUDENCIA



Coordinadora:
Isabel Gallego Córcoles
Profesora Titular de Derecho Administrativo de la Universidad de Castilla-La Mancha

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El incumplimiento de la normativa comunitaria y su necesario remedio en el plano nacional no pueden plantearse como un problema de nulidad del acto concesional. Sentencia del Tribunal Supremo de 25 de mayo de 2011

Clausulas sociales, ambientales, comercio justo y jurisprudencia del TJUE STJUE de 10 de mayo de 2012, as. C-368/10, Comisión c. Países Bajos

Restablecimiento del equilibrio económico de una concesión mediante la ampliación de su duración inicial

OBSERVATORIO DE ÓRGANOS CONSULTIVOS



Coordinadora:
Teresa Medina Arnáiz
Profesora Colaboradora de Derecho Administrativo (Universidad de Burgos)

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Régimen de las modificaciones de los contratos que se contiene en el artículo 107 TRLCSP Recomendación, de 1 de marzo de 2012, de la JCCA del Estado a los órganos de contratación sobre la interpretación del régimen contenido en el artículo 107 TRLCSP

Régimen de recursos supletorio para las Comunidades Autónomas que no tienen órgano de recurso propio o convenio Recomendación, de 1 de marzo de 2012, de la JCCA del Estado sobre la interpretación del régimen contenido dentro de la Disposición transitoria séptima, norma d) del TRLCSP

OBSERVATORIO DE RECURSOS CONTRACTUALES



Coordinador:
Fco. Javier Vázquez Matilla
Letrado Asesor Jurídico del Excmo. Ayuntamiento de Pamplona (Navarra)

[consultar todas las resoluciones](#)

Contrato de servicios no susceptible de recurso por importe. Inadmisión. Resolución Tribunal Administrativo de Contratación Pública de la Comunidad de Madrid 50/2011 de 8 de septiembre de 2012.

Inadmisión recurso contra Resolución del Tribunal Administrativo de Contratación Pública.

Resolución Tribunal Administrativo de Contratación Pública de la Comunidad de Madrid 51/2011 de 8 de septiembre de 2011.

Discrecionalidad técnica implica que lo evaluado con criterios técnicos, no se puede



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Legal framework of public procurement in Spain

- *Real Decreto Legislativo 3/2011, de 14 de noviembre, por el que se aprueba el Texto Refundido de la Ley de Contratos del Sector Público.*
 - * transposition of Directive 2004/18, and 89/665/CEE - 92/13/CEE.
 - * includes the award of concessions and other public-private partnerships.

- *Ley 31/2007, de 30 de octubre, sobre procedimientos de contratación en los sectores del agua, la energía, los transportes y los servicios postales.*
 - * transposition of Directive 2004/17 (water, energy, transport and postal services).

- *Ley 24/2011, de 1 de agosto, de contratos del sector público en los ámbitos de la defensa y de la seguridad.*
 - * transposition of Directive 2009/81/CE (defence and security).



Simplifying the rules to increase efficiency in public procurement: the case of Aragón.

Legal framework: ***Ley 3/2011, de 24 de febrero, de medidas en materia de Contratos del Sector Público de Aragón (Law 3/2011 on public procurement of Aragón).***

Subject (art.1):

1).- introduce measures to simplify procurement procedures, to ensure the efficient use of public funds, and 2).- creation of the Tribunal Administrativo de Contratos Públicos de Aragón (TACPA) (Administrative Tribunal of Public Procurement of Aragon)

includes:

- 1.- Measures to simplify the administrative burdens for bidders.
- 2.- Measures to simplify the award of contracts.
- 3.- Measures to increase integrity and transparency in the case of modification of the contract during their term.
- 4.- Measures to ensure an efficient remedies system even under the thresholds



Simplifying the administrative burdens for bidders in the preparation of the tenders

Proposal of Directive on public procurement (art. 57)

Contracting authorities **shall accept self-declarations** as preliminary evidence that candidates and tenderers fulfil the requested conditions of:

- No exclusion grounds (art. 55)
- Selection criteria (art. 56)

Law 3/2011 on public procurement of Aragón (art. 6)

...bidders **may** replace the documentation of compliance with the prerequisites for a self declaration signed, recognizing that meets the requirements of capacity, performance and reliability required, with compromise to accredit them if they are proposed as contractors

But only in negotiated and simplified open procedures, at the moment



estimated savings from the elimination of the accreditation of the legal ability to contract ...

45.435.000 € per year

estimated savings from the elimination of the accreditation of technical and professional ability ...

49.423.000 € per year

estimated savings from the elimination of the accreditation of previous experience (requirements of certificates) ...

58.601.000 € per year

Source: Analysis of the administrative burdens faced by Spanish firms, February, 2010.



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Simplifying the administrative burdens in the preparation of the procedure

Law 3/2011 on public procurement of Aragón (art. 6.2) and Proposal of Directive on public procurement (art. 57.3)

Before awarding the contract, the contracting authority shall require only to the tenderer to which it has decided to award the contract to submit the documentation proving the fulfillment of the pre-requisites about legal ability, economic and financial standing, and technical and professional ability

*estimated time savings from the requirement of documentation **only to one of the tenderers ...***

from 9 to 14 % of the processing time



Simplifying the procedures for contracts below the thresholds

“Simplified open procedure”:

* supplies and service contracts < 150.000 € //
public works contracts < 2.000.000 €

* notice only in the Region of Aragón website
(www.aragon.es *Buyer profile* section, so not in Official
Journals)

* Short time-limits for submission of tenders: min.
10 - max. 20 days.

* Possibility of use electronic auctions

* Tenderers may replace the documentation of
compliance with the pre-requisites for a self
declaration.

* Open procedure general rules also applicable



Measures in the field of the award of contracts

Contacts between contracting authorities and tenderers (art. 9 Law 3/2011)

*If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious errors in the tender must be corrected, **the contracting authority may contact the tenderer, although such contact may not lead to any alteration of the terms of the tender.***

*In every case where contact has been made, **a ‘note for the file’ shall be drawn up.***

Inspired in art. 148 Commission Regulation 2342/2002 (implementation of Financial Regulation of the European Communities) and General Court 10 december 2009, T-195/08 (see also, more recently, Court of Justice 29 March 2012, C-599/10).



Compulsory e-notifications in public procurement procedures over the thresholds

Proposal of Directive on public procurement

imposes the switch to fully electronic communication in all procurement procedures within a **transition period of two years** (2016):

“...Member States shall ensure that, all procurement procedures under this Directive are performed using electronic means of communication ...”(art. 19.7)

Law 3/2011 on public procurement of Aragón

Notifications in the field of **contracts over the thresholds** will be carried out **exclusively** by electronic means (2nd Final Disposition Law 3/2011)



Integrity of public procurement: The case of modifications of contracts during their term.

Proposal of Directive on public procurement (art. 72)

Contracting authorities shall publish in the Official Journal of the European Union a notice on such modifications. Such notices shall contain the information set out in Annex VI part G and be published in accordance with Article 49.

Law 3/2011 on public procurement of Aragón (art. 12 bis)

*The agreement of the contracting authority to amend a contract shall be **published in the same Official Journal and buyer profile** (on internet) that the publication of the award, containing the information about the scope and the amount, in order to ensure proper use of this power.*

*Therefore, this agreement will be **notified to all economic operators** who participated in the tender.*



Efficient remedies system... even under the thresholds

- “equivalent” remedies system even ***under the thresholds*** (art. 1.2 Directive 89/665/EEC, ammended by Directive 2007/66) :

Directive 2007/66: works > 5.000.000 € / services and supplies > 200.000 €

Ley 3/2011 Aragon: **works > 1.000.000 € / services and supplies > 100.000 €**
(because considered as relevants for the internal market)

- independent body responsible for review procedures (administrative, not judicial)

Tribunal Administrativo de
Contratos Públicos de Aragón

- possibility of suspension of the procedure for the award of a public contract

- arbitration system during performance phase.





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