

Room for improving the effectiveness of the remedies system for public contracts: Lessons learned from the Spanish case.



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The Spanish review system in the field of public procurement: *overview.*



Structure of the Spanish review review system



GENERAL ADMINISTRATION OF THE STATE

CENTRAL ADMINISTRATIVE
TRIBUNAL FOR
CONTRACTUAL APPEALS

- Competent review procedures within the GAS
- Also competent for regional contracts when the AC empowers it.

REGIONS

Some Regions have created their own review bodies with collegial nature (Madrid, Aragón, Catalonia, Navarra...) or with a single member. (Andalusia, Basque Country).

Others have empowered the CATCA (Balearic Islands, Comunidad Valenciana, Galicia, Asturias...)

Others continue with a system not adapted to Directive 2007/66(Canary Islands)

LOCAL AUTHORITIES

Unified model: Competence of the regional body extends to contracts municipal authorities (Madrid, Aragon ...). It is also followed by regions which have empowered the CATCA

Multiple model: creation of Bodies at local level in the Region of Andalucía and País Vasco (coexisting with the Regional Body).



Main procedural characters of the system



Legitimation: not only for tenderers or companies, but also recognised for professional and business associations, and local councilors (review linked to the right of good Administration).

Facultative nature of the administrative review (administrative review is an alternative for the judicial review).

Standstill (after the award decision), **and time limit to initiate the review procedure, for 15 days.**

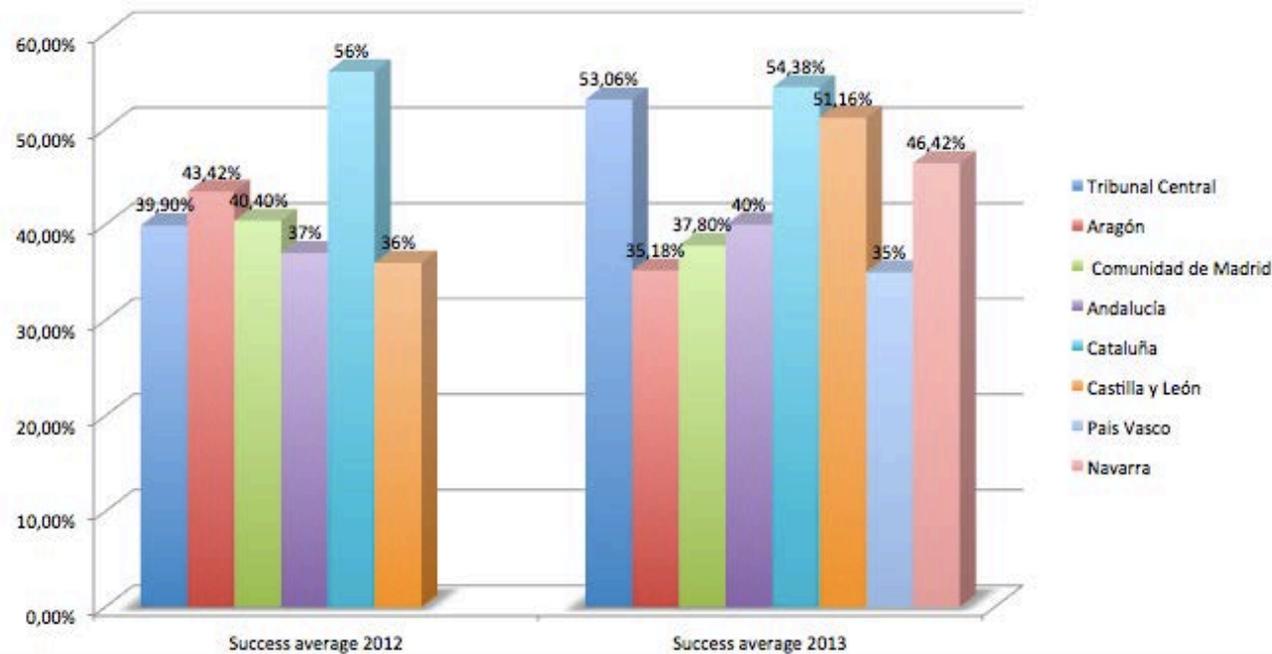
Automatic suspension of the award procedure in case of review of the award decision.

Duration of the review procedures **is no longer than 3 months.**



The Spanish review system at a glance

- From around 700 review cases (2012) to up to 2.500 (2013).
- Average of accepted reviews: 42 % (2012) to 44% (2013). The Central and two Regional Bodies have over 50% of accepted reviews in 2013.



Weaknesses of the system



Fragmented system:

- a).- the administrative review system **only apply to contracts covered by EU Directives** on public procurement (over the thresholds)
- b).- **only decisions taken after the celebration of the contract** can be discussed with the special administrative review. What about decisions adopted before the celebration of the contract that are considered «new contracts» (i.e. modifications)?

Splintering of the review bodies (Central, Regional, and some Local Bodies, and for the review of the contracts of the Parliaments)



Strengths of the system



Independent nature of the bodies created for the review procedures.

«**Auctoritas**» of the members of the review bodies: less than 3% of review decisions are later challenged in Courts (less than 1% of them are overturned by the Courts)

Transparency of the review decisions (available on internet for free)

Swift protection is the real protection.

Free cost for the appellants (...*but* Catalonia has recently approved a tax for the review between 750 up to 5000 EUR, depending the estimated value of the contract).





Thank you very much!

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