

THE GOVERNMENT
PROCUREMENT
REVIEW

FIFTH EDITION

Editors

Jonathan Davey and Amy Gatenby

THE LAWREVIEWS

THE GOVERNMENT PROCUREMENT LAW REVIEW

The Government Procurement Law Review
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PREFACE

Welcome to the fifth edition of *The Government Procurement Review*.

We noted in last year's preface the potentially momentous nature of a UK vote in favour of 'Brexit' (the UK's vote to exit the European Union) though at the time a 'leave' vote seemed the less likely outcome. Indeed, the past year has been one of momentous political events in the US and Europe. And, while the UK has voted to leave the EU, elections in France and Germany this year, involving populist contenders, have the potential to force further reform and reshaping of the EU.

Brexit will have significant consequences for the laws of the UK, with 10 per cent of all UK secondary legislation being derived from the EU, and procurement law is no exception: while the status quo on exit will be maintained for a period after that exit takes effect, procurement law reform is already in the sights of the UK's Prime Minister and Chancellor of the Exchequer, with both having referred to procurement law as a focus post-Brexit, pointing to a balance between encouraging the UK supply chain while not propping up uncompetitive domestic industries. Given the fact that the UK will seemingly not be signing up to the single market, it remains to be seen what accommodation (if any) the UK will make with the EU on procurement law. However, it must be remembered that, even if the UK were instead to opt to sign up to the WTO's Government Procurement Agreement (GPA), much of what many EU lawyers might consider the basic nuts and bolts of EU procurement law are actually also enshrined in the GPA, examples being the obligations to run a transparent, impartial and non-discriminatory process.

Last year's preface also contemplated ratification of the Trans-Pacific Partnership (TPP), involving 12 nations (including the US) responsible in aggregate for 40 per cent of global economic output, but the US withdrawal from the agreement, announced in January, has left the remaining TPP partners struggling to keep it alive. President Trump has also signalled the end of TTIP, the proposed trade deal between the EU and the US.

Elsewhere in the world, changes continue apace. While EU Member States have been adopting new national laws to give effect to the 2014 EU Directives, legislative changes have been made or are pending in many other countries. Among these, Mexico is introducing major reforms, particularly on combating corruption, and Australia is making changes in anticipation of joining the GPA. Meanwhile in Brazil, another country rocked by political upheaval, the government has been unable to pursue its procurement objectives in full, while in South Africa public procurement has been used as a policy tool to address economic and socio-economic issues.

When reading the chapters regarding European Union Member States, it is worth remembering that the underlying EU rules are set out at EU level. Readers may accordingly find it helpful to read the EU chapter first and then to read the relevant country chapter so as to gain a comprehensive understanding of the issues.

Last but not least, we would like to take this opportunity to acknowledge the efforts of all of the contributors to this edition as well as the tireless work of the publishers in ensuring that this work is published in good order and to time. We hope that you will find this edition a useful resource that adds value to your business or organisation.

Jonathan Davey and Amy Gatenby

Addleshaw Goddard LLP

London

May 2017

ARGENTINA

*Juan Antonio Stupenengo and Paula Omodeo*¹

I INTRODUCTION

Argentina is politically organised as a federal country. This implies that the federal government has jurisdiction only on matters expressly delegated to it by the provinces through the Federal Constitution. Provinces have jurisdiction over all other matters that have not been delegated, including those intended for the exclusive provincial environment, such as matters related to contracts entered into by the provincial and municipal governments to satisfy their own requirements.

Despite such federal regime preventing the existence of a legal framework that is applicable to the entire body of public contracts entered into by all types of governmental bodies in Argentina, certain common principles are applicable both to public contracts required by the federal government as well as to those entered into by the provinces, municipalities and the City of Buenos Aires. We analyse the federal level in this chapter.

At the federal level, the General Regime for Public Procurement (GRPP) was approved by means of Decree 1023/2001, issued on 13 August 2001 by the federal executive by exercising legislative powers delegated to it by the legislature under the terms of Section 76 of the Federal Constitution. After the inauguration of the new government, on 15 September 2016 the federal executive issued Decree 1030/16, approving the new regulation of the GRPP (the Regulation of the GRPP; together, the GRPP and its Regulation) and abrogating the existing Decree 893/12. Finally, on 27 September 2016 the National Procurement Office issued Dispositions 62-E/2016 and 65-E/2016, by means of which the Contracting Procedure Manual (CPM) and the electronic contracting system were approved.

II SCOPE OF PROCUREMENT REGULATION

i Public authorities with jurisdiction over government procurement matters

The GRPP is organised on the basis of two different approaches to procurement matters: the centralisation of public procurement contracts and regulation, and the decentralisation of the operational management of government contracts.

According to the regulation mentioned above, the regulating authorities are the following:

- a* the National Procurement Office, a body subordinated to the federal executive that serves as the governing entity for the GRPP and its Regulation. Under Section 23, Subsection a, GRPP, it is empowered with important functions such as, *inter alia*:

¹ Juan Antonio Stupenengo and Paula Omodeo are senior associates at Estudio Beccar Varela.

- submitting public procurement and organisational policies;
 - drafting laws and regulations regarding public procurement;
 - issuing explanatory, interpretative and complementary rules; and
 - drafting general specifications documents; and
- b different operating units for public procurement, which operate within each of the authorities that are governed by the GRPP and its Regulation (Section 23, Subsection b, GRPP). Under Section 12, GRPP, these units have different powers and duties, such as:
- interpreting or modifying public contracts based upon public interests;
 - deciding the expiry or termination of public contracts;
 - modifying public contracts up to 20 per cent of the total amount of the contract, under agreed conditions and deadlines and by adjusting the contract terms; and
 - monitoring, inspecting and directing public contracts by applying sanctions to bidders and contractors.

ii Types of government contracts subject to the GRPP

The GRPP and its Regulation are applicable to certain contracts entered into by the central administration – this is, by the federal executive, its ministries, departments as well as any other central government bodies – and its agencies, comprising social security institutions (Section 2, GRPP). They are also applicable to contracts entered into by the national universities (Section 2, Decree 1030/16).

Therefore, the GRPP and its Regulation are not applicable to, *inter alia*, the following: contracts entered into by the judicial or legislative branch; and contracts entered into by corporations in which the federal government has shareholding; for instance, YPF, Aerolíneas Argentinas. All of these entities are empowered to adopt their own procurement rules. Notwithstanding this, it should be noted that many of these specific procurement regulations are similar to those contained in the GRPP and its Regulation.

From an objective point of view, the contracts that are governed under the GRPP and its Regulation are the following: sales, supplies, services, consulting, leasing, swaps, concessions of state goods and assets, and, in general, any other agreement that is not expressly excluded by the GRPP (Section 4, GRPP).

Among the contracts that are excluded are those regarding public works, public works concessions, public service delegations, licences and those related to sovereign debt transactions (Section 5, GRPP and Section 3, Decree 1030/16). The GRPP and its Regulation are supplemented by certain sector-specific procurement legislation, including that applicable within the public utilities fields.

The GRPP and its Regulation are not applicable, either, to public-private partnership contracts, which have been recently regulated by Law 27,328 (the PPP Law). According to this special regime, public-private partnership contracts are an alternative form of public procurement by means of which federal state entities or agencies and private or public companies enter into a public contract with the aim of developing projects of public interest in the fields of infrastructure, housing, activities and services, productive investment, applied research or technological innovation (Section 1, Law 27,328). Although public-private partnership contracts are not governed by the GRPP and its Regulation, the PPP Law contains much of their principles and rules, such as, for example, the obligation to hold a public tender and to guarantee the principles of transparency, publicity, dissemination, equality, concurrence and competence (Sections 1, 7 and 12, PPP Law).

III SPECIAL CONTRACTUAL FORMS

i Framework agreements and central purchasing

The Regulation of the GRPP sets forth that the National Procurement Office is empowered to enter into framework agreements with private sector providers to ensure the direct supply of goods and services to governmental entities, in accordance with the form, terms and other conditions established in such agreements.

Once the framework agreement has been signed and has entered into force, the contracting entities are required to buy exclusively under such framework agreement, interacting directly with the provider that has been selected by the National Procurement Office (Section 25, subsection f, Regulation of the GRPP and Section 126, CMP).

This obligation applies to all jurisdictions and contracting entities that operate within each ministerial jurisdiction, unless they themselves can demonstrate that the goods or services included in the existing framework agreement do not fulfil their needs or, either, that they could obtain, on their own, more advantageous conditions. In such circumstances, an entity must inform the National Procurement Office (Section 126, CMP).

ii Joint ventures

Under Argentine law, joint ventures are contractual arrangements developed to perform a certain activity, execute a specific contract or render a service for a limited period of time. They do not involve the establishment of a separate legal entity.

According to the GRPP, bidders can submit tenders individually, or as part of a group, joint venture or association, or with a different legal person.

Notwithstanding this, and according to the above-mentioned PPP Law that governs public-private partnership contracts, under certain circumstances, individuals and companies may enter into a cooperative agreement with a public authority so as to develop a project of public interest.

IV THE BIDDING PROCESS

i Procedures

The GRPP provides for three different kinds of procurement procedures to award government contracts:

- a* public bid, which is the principal method of procuring and implies a broad call to tender;
- b* private bid, which consists of an invitation to tender addressed to certain specific bidders that are already enrolled with the National Procurement Office Registry; and
- c* direct award, where there are no competitive procurement procedures. This exceptional procedure is applicable only to certain special cases expressly authorised by the GRPP, including:
 - whenever the contract is valued at below 1.3 million pesos;
 - whenever, according to the applicable rules, it is not possible to apply a different procedure;
 - whenever the service to be hired or the asset to be acquired are exclusively carried out or produced by a certain company, artist or specialist (e.g., goods or services that are covered by exclusive IP rights);
 - in the event of the failure of a previous tender or competitive procedure;

- whenever, for duly proved urgency or emergency reasons, it is not possible for the contracting entity to call for a public or private bid; and
- whenever the procuring entity is contracting for the repair of machinery, vehicles, equipment or engines whose disarmament, removal or prior examination is essential to determine the necessary repair (Section 25, Subsection d, GRPP).

The procedure to be used in each case depends on the threshold value of the contract. In fact, if the contract to be awarded is valued at under 75,000 pesos, the contracting authority is free to award the contract at its own discretion. If the contract to be awarded is valued at over 75,000 pesos but less than 1.3 million pesos, the contracting entity is authorised to award a contract without a competitive procedure. If the contract to be awarded is valued at over 1.3 million pesos, a competitive procedure is required. In this case, if the contract is valued at over 1.3 million pesos but less than 6 million pesos, the contracting authority shall call for a private bid, submitting invitations to tender to bidders already enrolled with the National Procurement Office Registry. Public contracts valued at over 6 million pesos must be awarded after a public bid procedure, which implies a broad call to submit offers and a general announcement.

ii Notice

The GRPP and its Regulation set forth that, in cases of open tendering, procuring entities must publish notices of invitation to tender in the official publication of the government (i.e., the Official Gazette) and either on the National Procurement Office's website² or in the Electronic Contracting System³ (Section 40, Regulation of the GRPP). In practice, the invitation to tender is also commonly published in the relevant national or local newspapers. The aforementioned publication must take place for two days, and at least 20 or seven calendar days in advance of the date fixed for the opening of the bids, depending on whether the call is published or not, respectively, on the website (Section 40, Regulation of the GRPP). For international public tenders, at least 40 calendar days before the date fixed for the opening of the bids, notices of an invitation to tender must be published on the official website of the United Nations ('UN Development Business') or the World Bank ('DG Market') (Section 32, GRPP; and Sections 40 and 42, Regulation of the GRPP).

In the case of private bids, the contracting authority shall send invitations to at least five suppliers that are already enrolled with the National Procurement Office Registry for the category of goods or services to be awarded. Such invitations must be sent a minimum of seven days in advance of the date for the opening of the bids. In addition, calls for private bids shall be advertised on the National Procurement Office official website as from the date on which invitations were sent (Section 41, Regulation of the GRPP).

In the case of direct awards, the contracting authority must send invitations to at least three suppliers and, in certain cases, make available procurement information on the National Procurement Office website (Section 44, Regulation of the GRPP).

In accordance with the Regulation of the GRPP, certain information and documents must be published on the National Procurement Office official website, such as, for instance, notices of invitation, drafts of specification documents, specification documents that are in

2 www.argentinacompra.gob.ar.

3 www.comprar.gob.ar.

force and their clarifications, minutes of a bid's opening, comparison tables of bids, opinions on the evaluation of the bids and the objections raised against them, awards, contracts and any other data that the regulations establish (Section 47, Regulation of the GRPP).

The Regulation of the GRPP provides a list of the information that the procuring entities must always include in the notice of invitation to tender in the case of an open tender. Such information includes the following:

- a* the individual details of the procuring entity;
- b* the type of procedure (i.e., whether or not it is an open tender);
- c* the identification number of the procurement administrative record;
- d* the prices of the tender documents;
- e* the place and time frame for consultation of the tender documents; and
- f* the email address of the procuring entity (Section 17, CPM).

iii Submitting and amending bids

Prior the submission of a bid, it is necessary to obtain a certificate of good standing for contracting with the federal government, established in Resolution 1814/2005 of the Federal Administration of Public Revenue and to register before the Suppliers System of Information (SIPRO). At the provincial and municipal levels, the prior registration of bidders within different local registries of suppliers is also mandatory.

According to the Regulation of the GRPP, bids must be submitted at the place and within the time frame specified in the tender documents (Section 51, Regulation of the GRPP and Section 22, CPM). Therefore, the procuring entity must reject any bid that is submitted after such deadline. Bids can also be submitted by mail, according to the rules stated in the GRPP (Section 22, CMP).

The submission of a bid implies, for the bidders, full knowledge and acceptance of all of the rules and clauses governing the tender (Section 52, Regulation of the GRPP); therefore, such rules and clauses cannot be validly challenged after such submission.

According to the Regulation of the GRPP, as a principle, the bid shall not be amended after the expiry of the bid submission term (Section 53, Regulation of the GRPP). The amendment of bids is exceptionally accepted to correct some correctable errors, such as data or information already included in databases of public bodies, being written in a foreign language, or, in general when it does not alter the principle of equal treatment of bidders.

To be admitted, every bid must accomplish certain formal requirements, such as, for instance, the bid being written in Spanish, the original bid being signed on every page by the bidder or his or her representative, or the bid being submitted with the number of copies stated in the tender documents. The bidder must also establish a special address where every notification must be issued within the tender, and the price offered that, as a rule and unless something different is stated, must be established in national currency. Any other information or document that may be required in the tender documents must be also included. Besides, although there is not established a fee to submit a bid, suppliers must give a guarantee that the offer will be maintained for the duration of the tender. The maintenance bid guarantee is 5 per cent of the final price of the bid (Section 78, Subsection a, Regulation of the GRPP).

Unless a different term is established in the tender documents, bidders must maintain their bids for at least 60 calendar days from the date of the opening of the bids. Such term can be automatically extended, for the same 60-day period, every 60 days. A bidder who has decided not to maintain his or her bid for a new time period must give notice of such decision

at least 10 days before the expiry term. As a consequence, the bidder will be excluded from the public tender, but will not lose the maintaining bid guarantee (Section 54, Regulation of the GRPP).

The bids must be opened at the place, date and time stated in the tender documents, at a public event (Section 59, Regulation of the GRPP). The original version of each bid must be available to the bidders for the following two days (Section 60, Regulation of the GRPP).

V ELIGIBILITY

i Qualification to bid

According to the GRPP and its Regulation, the following persons cannot enter into contracts with the public administration:

- a* bidders who have been sanctioned by the National Procurement Office for infringements committed in previous tenders or whose previous public contracts were terminated by the government due to a fault of the supplier (Section 28, Subsection a, GRPP);
- b* companies in which agents or employees of the federal state have sufficient shareholding so as to form their social policy; their successors, transformations, mergers or spin-offs, and even those companies that are controlled by or are the controller of any of them (Section 28, Subsection b, GRPP and Section 68, Subsection a, Regulation of the GRPP);
- c* bidders who have been convicted for the commission of intentional crimes are disqualified for a period equal to twice the length of the sentence imposed for their crimes (Section 28, Subsection d, GRPP);
- d* bidders who do not meet their tax and social security obligations (Section 28, Subsection f, Regulation of the GRPP);
- e* bidders that, within a term of three years prior to the submission of the bid, were sanctioned for abuse of dominant position, dumping or any other form of unfair competition (Section 68, Subsection f, Regulation of the GRPP);
- f* bidders that have breached previous public contracts (Section 68, Subsection g, Regulation of the GRPP);
- g* companies that have been convicted abroad of bribery or transnational bribery practices under the terms of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; these companies will not be eligible for a period equal to twice the sentence (Section 68, Subsection h, Regulation of the GRPP); and
- h* human or juridical persons that were included in the lists of disabled persons of the World Bank or the Inter-American Development Bank, as a result of corrupt practices referred to in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; they will not be eligible while such condition persists (Section 68, Subsection i, Regulation of the GRPP).

ii Conflicts of interest

Regarding the subjective grounds for disqualification listed above, those under (b) above tend to prevent potential conflicts of interest.

iii Foreign suppliers

Foreign suppliers are allowed to submit bids exclusively within international tenders – that is, those tenders that, due to the nature of the object or the service to be hired, the call to bid is extended to interested parties and bidders from abroad. According to the GRPP, a ‘foreign bidder’ is a bidder whose principal place of business is outside Argentina and that lacks a branch duly registered in Argentina (Section 26, Subsection b, point 2, GRPP).

As mentioned above, notices of invitation to take part within an international public tender must be published on the official website of the United Nations (‘UN Development Business’) or the World Bank (‘DG Market’), at least 40 calendar days before the date fixed for the opening of the bids (Section 32, GRPP and Sections 40 and 42, Regulation of the GRPP).

Foreign suppliers are only allowed to bid within a national tender as long as they have already incorporated a branch or subsidiary in Argentina.

If, due to special and grounded reasons, the contracting authority needs to purchase a specific asset or hire a certain service from abroad because such is not available in Argentina, it may invite foreign suppliers to take part in direct awarding.

In procurement proceedings related to the construction of public works, as well as in cases related to the contracting of consulting services, Law 18,875 prohibits the participation of foreign construction and consulting services providers unless they enter into joint venture agreements with local companies. This restricted participation of foreign providers can only take place if the government has previously called for an international public bid.

VI AWARD

i Evaluating tenders

The period for evaluating tenders runs from the time that the procurement administrative record is sent to the Evaluation Commission up to the time of the notification of the evaluation report to all the bidders (Section 61, Regulation of the GRPP).

The Evaluation Commission is a consultative body whose main function is to issue a non-binding opinion over the submitted bids. It is composed of three members and their alternates, all of whom must be appointed by the highest authority of the contracting entity. The following cannot be appointed to the Evaluation Commission: persons who decided the opening of the public tender, and persons who have the power to finally approve the whole procedure (Sections 62 and 63, Regulation of the GRPP).

The opinion issued by the Evaluation Commission must analyse the formal requirements of the bids, the subjective evaluation of the bidders (that is, whether they meet the requirements stated in the GRPP; its Regulation and in the tender documents), and the objective evaluation of all the submitted bids. The latter analysis must objectively take into consideration all the requirements established by the tender documents for the admissibility of the bids. Regarding the admitted bids, the Evaluation Commission must take into account the different aspects provided in the specification documents in order to compare them and determine their order of merit (Section 27, CPM).

According to the GRPP, the contract must be awarded to the ‘most suitable offer’, taking into consideration the price, the quality of the good or service, and the bidders’ economic, financial and technical capabilities. Therefore, the analysis of the Evaluation Commission and the procuring entity must not be exclusively based on the economic aspects (i.e., the lowest price) but rather on the three above-mentioned aspects (Section 15, GRPP).

The non-binding opinion of the Evaluation Commission must be published on the official website of the National Procurement Office, and duly notified to all of the bidders within a term of two working days from its issuance (Section 73, Regulation of the GRPP and Section 28, CPM). As discussed below, the non-binding opinion may be challenged by the bidders as well as anyone who invokes and proves his or her interest in the subject matter of the opinion.

ii National interest and public policy considerations

Law 25,551 gives preference to the acquisition of ‘goods of national origin’, being those goods produced or extracted within the territory of Argentina, as long as the cost of imported materials or inputs does not exceed 40 per cent of its gross production value (Section 1 and 2, Law 25,551).

In general terms, the preference provided under Law 25,551 is granted to bids that, in offering ‘goods of national origin’, have the same or a lower price than those bids involving goods that are not of national origin, after the price of the latter is increased by 7 per cent when such offers are made by companies classified as small and medium-sized enterprises, and 5 per cent when made by other companies (Section 3, Law 25,551).

VII INFORMATION FLOW

According to the GRPP and its Regulation, the principles of openness and publicity are general principles that govern all procurement procedures (Section 3, Subsection d, GRPP). This is why many provisions of the GRPP and its Regulation refer to the flow of information regarding public procurement:

- a* the GRPP states that any interested party has the right to access the public procurement administrative record, except for those documents protected by confidentiality rules or that are declared to be either confidential or secret by the procuring entity. During the period of evaluation of the tenders, bidders and third parties are not entitled to have access to the record (Section 4, Regulation of the GRPP); and
- b* regarding the draft of the tender specifications, even when commonly prepared and approved by the procuring entity with no prior mandatory public consultation, the GRPP states that, when the complexity or the amount of the procurement so justifies, such entity may allow a preliminary stage, before the bid call, for receiving comments from any interested party about the tender specifications draft (Section 26, Regulation of the GRPP).

Despite the procuring entity not being bound by the comments issued by potential bidders, prior to approving the tender specification it must consider all the bidders, and justify the reasons whether they are admitted or not.

- c* Regarding the tender documents, the GRPP states that anyone can have access to them or purchase them either from the offices of the procuring entity or from the website of the National Procurement Office (Section 48, Regulation of the GRPP). Nevertheless, it must be noted that it is very common that the tender documents – especially those of a technical nature – are only accessible through purchasing them at the offices of the contracting entity.

Suppliers can submit written questions to the procuring entity for clarification of the tender documents. Unless otherwise stated, any questions can be submitted up to three days before the date fixed for the opening of the bids (Section 49, Regulation of

the GRPP). As a result of such questions, the procuring entity may issue explanatory circulars (up to two days before the date fixed for the opening of envelopes), or amendments to the tender documents (up to one day before the date fixed for the opening of envelopes) that are construed as amendments to the tender specifications and become mandatory for both contracting authorities and bidders. Both types of documents are available to all interested suppliers (Section 50, Regulation of the GRPP).

- d* Regarding submitted bids, originals must be exhibited for all bidders for two days from the date of the bid opening. Bidders may obtain a copy of such bids (Section 60, Regulation of the GRPP).

VIII CHALLENGING AWARDS

i Procedures

The Regulation of the GRPP only provides for a special procedure for challenging the non-binding opinions of the Evaluation Commission (Section 73, Regulation of the GRPP, and Section 29, CPM). It does not provide for a specific procedure for challenging an award. Despite this, as outlined below, awards may be challenged either by any of the unsuccessful bidders or by any other aggrieved person through the general administrative and judicial review procedures established in the Administrative Procedures Act, approved by Law No. 19,549, and its regulation.

ii Grounds for challenge

Challenges are submitted before the public administration or before the judiciary. In cases in which a challenge is filed before an administrative body (that is, the procuring entity itself or its superior administrative authority), the challenge may refer to the illegitimacy of the procedure or of the award, an incorrect evaluation or assessment of the tender, or the inconvenience (i.e., in those cases where challenges are submitted before the administrative body, such challenge may be based not only on legal reasons (legitimacy), but also on the fact that one bid is preferable over another for reasons unrelated to the legal aspects, such as, for example, the quality of the goods or services, the reputation of the bidder) of the successful bid in comparison to the ones that were rejected.

The grounds for challenge are considerably more restricted if filed before a court of justice. In such case, the judicial claim should be based exclusively on grounds of illegitimacy either related to the procedure or to the award. Moreover, not all forms of illegitimacy will secure the success of a judicial claim, since judges tend to be very strict in their approach to these types of cases: the federal courts have traditionally adopted a deferential approach regarding government procurement challenges.

iii Remedies

We must distinguish between the remedies provided for challenging an opinion of the Evaluation Commission from those provided for challenging an award.

According to the Regulation of the GRPP, as mentioned above, Evaluation Commission opinions may be challenged by bidders – within three calendar days from such notification – and by any other aggrieved person – within three calendar days from an opinion’s publication on the official website of the National Procurement office – and in any case, if applicable,

by previously providing the challenge guarantee (that is, the guarantee that is usually required for the viability of the claim so as to assure its seriousness) (Sections 73 and 78, Subsection d, Regulation of the GRPP).

The contracting entity must make a decision on the merits of those complaints in the same resolution whereby the public contract is awarded (Section 74, Regulation of the GRPP).

Regarding challenges of awards, The Administrative Procedures Act and its regulation provide different remedies for filing a complaint:

- a* the challenger has the option to first file a complaint before the contracting entity. In this case, the challenger shall request the procuring entity to reconsider its decision. The complaint should be filed before the awarding authority (which is usually the procuring entity itself) within a term of 10 calendar days from the notification of the award (Section 84, Decree 1759/1972);
- b* if the previous complaint was not filed, or if, having been filed, it has been rejected, the challenger must file another administrative complaint before the superior administrative authority. In this case, the complaint should be filed before the authority that awarded the contract (which is usually the procuring entity itself) within a term of 15 calendar days from the notification of the awarding of the rejection of the previous remedy (Section 89, Decree 1759/1972); and
- c* if the complaint before the superior administrative authority is rejected, the challenger shall request the federal judiciary, within a term of 90 working days, to review the award on grounds of its illegality (Section 25, Subsection a, Law 19,549, Administrative Procedure Act). If the judiciary nullifies the challenged award, the procuring entity can opt to re-award the contract in full adherence with the considerations set out in the court's ruling or to cancel the procurement proceedings. Note that the court itself does not have the power to award the contract to the claimant.

As a rule, the filing of such claims does not trigger, *per se*, a suspension of the procurement process. However, on its own initiative or by means of a request from a claimant, the contracting entity may suspend the process for public interest reasons, to avoid the causation of damages to the aggrieved party, or when a nullity has been duly invoked and accredited by the petitioner (Section 5, Regulation of the GRPP and Section 12, Law 19,549, Administrative Procedure Act). If the contracting entity rejects the suspension request, the claimant is entitled to file before the judiciary a request for preliminary measures to obtain the provisional suspension of the public procurement proceedings while the complaint is pending (Law 26,854).

IX INTERNATIONAL PUBLIC PROCUREMENT

Regarding international public procurement, Argentina is an observer of the World Trade Organization's Agreement on Government Procurement, whose fundamental aim is to liberalise government procurement markets.

Within the regional sphere, the state parties of Mercosur, including Argentina, signed the Mercosur Public Procurement Protocol to provide suppliers and service providers established in the Mercosur Member States with a guarantee of non-discriminatory treatment in any procurement processes carried out by public entities of any of the state parties. The

Congress of Argentina approved the Protocol through Decision 23/10 of the Common Market Counsel; however, the state parties decided to subject the Protocol to a review process that is currently ongoing.

Finally, it must be mentioned that, unlike its predecessor, the new Regulation of the GRPP does not contain any provision aimed at governing public procurements that take place in foreign countries.

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