

Hungary

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1.Does your legal system provide specific procedures for the award of contracts by contracting authorities?

Yes, the legal system in Hungary provides for specific procedures for the award of contracts. The main legal source regulating the different procurement procedures is the Act CXXIX of 2003 on Public Procurement Procedures (the “Public Procurement Act”), which has been legislated and adapted according to the requirements of the EU Directives for the award of contracts.

2.Do the procedures for the award of contracts depend on the kind of goods, services etc. which are to be procured?

Yes, Hungarian law - subject to the EU regulations - distinguishes according to the type of goods/services (the subject) that are to be procured. The possible subjects of public procurement are as follows:

- (a) supply contracts,

- (b) public works contracts,
- (c) service contracts,
- (d) concession for construction
- (e) concession for services

Furthermore, the Public Procurement Act sets forth specific rules regarding special procurement procedures of entities operating in the water, energy, transport and postal services sectors.

3. Do the procedures for the award of contracts and/or certain procedural regulations depend on the value of the goods, services etc. which are to be procured (thresholds) and if so, what are the thresholds?

Yes, the purchase of specific goods and services attached to the predetermined value limits is subject to public procurement procedures as set forth in the Public Procurement Act. Different provisions apply to procurements over the value limits set by the European Communities, the ones below the community limit and above the national limit, and to those below the national limit.

As regards the public procurement procedures over the value limits set by the European Communities, the essential thresholds currently amount to

- (a) EUR 4,845,000 for construction investments / concession for construction,
- (b) EUR 125,000 for supply/service contracts awarded by ministries, the Prime Minister's Office and the central purchasing entities authorized to conduct centralized procurement procedures,
- (c) EUR 193,000 for all other public supply/service contracts,
- (d) EUR 387,000 for public supply/service contracts in the sector field (water, energy, and transport sectors)

As regards the national limits, these are determined by the Budgetary Act of the current year.

4. In what way does the contracting authority have to inform the market about the intended procurement?

Contracting authorities may prepare and publish a preliminary prospectus before the beginning of each fiscal year, for the year or for the following period of maximum 12 months concerning:

- (a) all public supply contracts planned for the year (other than those subject to any exemption and the value of which is not less than the community limits) with an estimated contract value of not less than EUR 750,000;
- (b) all public service contracts under Annex 3 of the Procurement Act planned for the year (other than those subject to any exemption and the value value of which is not less than the community limits) with an estimated contract value of not less than EUR 750,000.

Furthermore, open procurement procedures must be commenced by the publication of a tender notice.

In case of negotiated procurements, an invitation for participants shall be published both in community level and national level procedures.

In case of community level procurements, tender notices and invitations for participants shall be published in the Official Journal of the European Union and in TED data bank. In case of national level procurements, tender notices and invitations for participants shall be published in the official gazette of the Council of Procurements (In Hungarian "Közbeszerzési Értesítő").

5. Does a potential bidder which is interested in the contract need to have a specific legal form, e.g., corporation, to submit a tender?

As a rule, the contracting entity may not render the submission of tenders conditional upon the

establishment of a business association or an entity with legal personality. However, the contracting entity may require the establishment of a business association or an entity with legal personality if the contract is awarded to a consortium of bidders and such requirement regarding establishment is justified by the interest of fulfilling the contract. Bidders shall be notified of this clause in the tender notice.

6.Are bidders allowed to submit joint offers, e.g., as general contractor and subcontractor or as bidding consortium?

Yes, both are possible.

7.Do potential bidders interested in the contract need to have a registered office or branch office in your country or is it possible to submit a tender for the contract directly from abroad?

The Public Procurement Act provides that bidders established in the European Union and community goods shall be granted national treatment in public procurement procedures. National treatment to non-Community bidders and non-Community goods shall be granted in procurement procedures in harmony with the international commitments of the Republic of Hungary and the European Communities in the field of public procurements.

With respect to the above, bidders registered in one of the member states of the European Union may participate in procurement procedures under the same conditions as the Hungarian bidders. Bidders registered outside of the territory of the European Union shall be treated according to the international commitments of Hungary and the EU.

In light of the above, an entity registered in any of the member states of the EU is not required to have a registered office or branch office in Hungary and may submit a tender directly from abroad. As far as a potential bidder registered outside the territory of the EU, special rules might apply depending upon the applicable international or bilateral treaty.

8.If it is possible for foreign bidders to submit a bid for a contract to a contracting authority directly from abroad, does the foreign bidder have to consider certain additional aspects, such as having to provide certain additional supporting documents or whether domestic bidders receive preferences in the award of contracts?

Yes, it possible for foreign bidders to submit a bid for contract to a contracting authority directly from abroad.

As explained above, the Public Procurement Act provides that bidders established in the European Union and community goods shall be granted national treatment in public procurement procedures. National treatment to non-Community bidders and non-Community goods shall be granted in procurement procedures in harmony with the international commitments of the Republic of Hungary and the European Communities in the field of public procurements.

9.Is a multinational bidding consortium allowed to submit a bid?

Yes. As explained under questions no. (6) and (8), bidders established in the European Union and community goods shall be granted national treatment in public procurement procedures. National treatment to non-Community bidders and non-Community goods shall be granted in procurement procedures in harmony with the international commitments of the Republic of Hungary and the European Communities in the field of public procurements.

With respect to the above, bidders registered in one of the member states of the European Union may participate in procurement procedures under the same conditions as Hungarian bidders. Bidders registered outside of the territory of the European Union shall be

treated according to the international commitments of Hungary and the EU.

10. In which language do the tenders have to/can be submitted and which form is required, e.g., written form, fax, e-mail or digital?

The contracting entity must publish in the tender notice, among others, the language (languages) of the tender, which is mainly Hungarian. Bidders shall prepare their tenders in accordance with the formal and content requirements defined in the tender notice and in the tender documentation.

11. Are there any legal regulations governing the time within which bids have to/can be submitted to the contracting authority?

The tender notice shall also contain the final deadline for submission of bids. The Public Procurement Act sets forth minimum periods to be taken into account by the contracting entity during the determination of the deadline for submission. The term of the minimum periods depends on the type of the public procurement procedure. A deadline indicated in the tender notice shall commence on the day that follows the publication of the tender notice (invitation to tender).

In case of open procedures, the contracting entity may not set the time limit for the receipt of bids (final deadline for submission of bids) at less than 52 days from the date of sending the notice containing the tender notice. The time limit for receipt of bids may be replaced by a shorter period if the conditions defined in the Public Procurement Act are fulfilled.

In other types of public procurement procedures the final deadline for submission can be shorter (e.g. in accelerated procedures, the minimum time limit, generally, cannot be less than fifteen days following the publication of the tender notice).

In addition, please note that the time limit for receipt of bids may also be reduced if the contracting entity has drawn up and transmitted the tender notice by electronic means in accordance with the format and procedures laid down in specific other legislation.

12. Can the bidders claim their costs for preparing their bid? If so what are the conditions for, and the maximum amount of, reimbursement?

Generally, bidders cannot reclaim the costs for preparing their bids. However, civil actions may be initiated in connection with any infringement involving public procurements procedures if the infringement is established by final ruling of the Public Procurement Arbitration Committee, or by the court in the course of the review of a decision of the Public Procurement Arbitration Committee.

If a bidder's claim for damages is limited to recover from the contracting entity the expenses incurred in connection with the preparation of the bid and the participation in the public procurement procedure, it is sufficient to provide proof to the extent:

- (a) that the contracting entity has breached any provision of the legal regulations on public procurement procedures;
- (b) that the bidder had a real chance to win the contract; and
- (c) that the infringement had a direct impact on the bidder's chances for winning the contract.

13. Are there any selection criteria set by law that bidders have to satisfy to in order to receive the award of a contract and can the contracting authority establish its own additional selection criteria?

The Public Procurement Act defines the grounds of exclusion (e.g. the bidder shall be excluded if it is being wound up, or is under bankruptcy or liquidation proceedings, it has not fulfilled any obligation relating to the payment of taxes, customs duties or social security contributions etc.).

In addition, on the basis of the Public Procurement Act, the contracting

entity may prescribe in the tender notice additional grounds of exclusion (e.g. the bidder can be excluded if it has been convicted of a misdemeanor offense concerning his economic or professional conduct by a judgment rendered within five years to date; it has been sanctioned by a final administrative or court ruling for any breach of obligation in connection with a public procurement contract within the preceding five years, etc.)

14. Does your legal system provide legal protection against the proposed award of a contract to a competing bidder even before the contract with the competitor is actually awarded (primary legal protection)? If so please generally explain the proceedings. Is such a primary legal protection available to foreign bidders without any restriction?

In the event of any illegal conduct or infringement in public procurements or contract award procedures, review procedures may be initiated by the bidders. Subject to certain conditions, review procedures can be initiated even before the award of the contract takes place.

(Please be advised that a conciliation procedure may also be requested in all cases subject to remedy under the Public Procurement Act. The objective of the conciliation procedure is to resolve any dispute between a contracting entity and a bidder or any other interested party by settlement in conformity with legal regulations. Participation in a conciliation procedure is voluntary. If either party to the dispute refuses to participate in the conciliation procedure, it may not be initiated. Applying the conciliation procedure shall have no effect on using any other form of remedy provided for in the Public Procurement Act; however, a review procedure may not be initiated before the conclusion of the conciliation procedure.)

Actions initiated in connection with any infringement involving public procurements and contract award procedures shall fall within the competence of the Public Procurement Arbitration Committee (the “**Committee**”).

A petition for review may be submitted by the contracting entity, by the bidder or any other interested party, whose right or lawful interest is violated or jeopardized by any unlawful conduct or infringement of the Public Procurement Act. The petition shall be filed within 15 days of the occurrence of the infringement, or within 8 days of the announcement of results where the decision adopted upon conclusion of the award procedure is unlawful. If the petitioner gained knowledge of the infringement after the fact, these deadlines shall commence upon gaining knowledge. No petition shall be accepted after 90 days following the infringement. Failing to comply with such deadlines shall constitute a waiver of the respective rights.

Firstly, the Committee shall check whether the petitions are in compliance with the formalities prescribed by laws. If the petition does not meet the requirements of the Public Procurement Act, the Committee may oblige the petitioner to submit additional data or documents. If the petitioner fails to do so, the petition is to be refused.

Generally, the Committee shall conclude the proceedings within 15 days of the date of commencement of the proceedings if no hearing has been held. If a hearing was held, the Committee shall conclude the proceedings within 30 days of the date of commencement of the proceedings. Under specific circumstances, the above deadline may be extended once by 10 days.

The Committee shall adopt a decision in the course of the review of the public procurement procedure in which decision the Committee may declare that the public procurement procedure was unlawful and cancel the result of the public procurement procedure and may impose a fine. The Committee may file a civil suit in accordance with the general provisions on civil procedures for annulment of a contract concluded in violation of the regulations governing public procurements or contract award procedures.

The court review of the decision of the Committee may be initiated in accordance with the Public Procurement Act.

15. If primary legal protection exists in your country, does it depend on certain conditions, i.e., certain thresholds or the kind of goods, services etc. to be procured? If so, what are the

conditions?

The form and the procedure of the legal protection and the remedies in case of the infringement of the provisions of the Public Procurement Act do not depend on such conditions in Hungary.

16.If there is no primary legal protection, is there legal protection granted after the contract has been awarded, e.g. through damage claims etc. (secondary legal protection)? If so, what are the principal conditions which have to be presented to a court in order to receive a damage award?

Civil actions may be initiated in connection with any infringement involving public procurements and contract award procedures only if the infringement has been established by a final ruling of the Committee, or by court following the review of a decision of the Committee.

As indicated under question no 12 above, if a bidder's claim for damages is limited to recover from the contracting entity the expenses incurred in connection with the preparation of the bid and the participation in the award procedure, it is sufficient to provide proof to the extent:

- (a)that the contracting entity has breached any provision of the legal regulations on public procurements and contract award procedures; and
- (b)that the bidder had a real chance to win the contract; and
- (c)that the infringement had a direct impact on his chances for winning the contract.

17. Can your office

i.give legal advice to foreign clients concerning the relevant formal conditions for preparing a proper bid, etc. and assist in the procurement procedure in your country?

ii.represent foreign clients seeking primary and secondary legal protection before all public offices/courts in your country?

iii.Please name a contact person within your office for questions of public procurement law!

Yes, our office can advise on the matters as described in question no 17 above. Our office has advised numerous clients in connection with various aspects of public procurement procedures in Hungary and has a considerable experience in regard of such procedures in Hungary.

The members of our law firm who have worked on public procurement matters are as follows: dr. András Szecskay, dr. Judit Gulás, dr. Judit Budai, dr. Katalin Grósz, dr. Anikó Keller, dr. Zoltán Balázs Kovács, dr. László Pók and dr. János Vajda. In case of a possible new assignment, please send all information to our managing partner, dr. András Szecskay and kindly copy dr. Judit Gulás on the message.