

Norway

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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 Norway provides specific procedures for the award of contracts. Through the EEA Agreement Norway is obliged to follow the EU regulations for award of contracts with EU-wide relevance. In Norway, as in all member states of the EU, there are several national regulations concerning the different procurement procedures. However, the domestic legislation still has to observe multiple standards given by the EU directives. As a consequence, national regulations for the award of contracts are legislated or adapted according to the requirements of the EU directives and the relevant EU standards have to be considered for the interpretation of Norwegian law.

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

The Norwegian law on public procurements applies to all kinds of goods and services and is superior to secondary law, which regulate the different procedures for the award of contracts. The secondary law distinguishes according to the type of goods/services that are to be procured. The following national regulations apply to the following goods/services:

- i. Public procurements regulation ("Forskrift om offentlige anskaffelser") applies to goods, services and the carrying out of building and construction works.
- ii. Purchase regulations for the utilities sector apply to contracts in the water, energy, transport and postal services sectors. ("Forskrift om innkjøpsregler i forsyningssektorene (vann- og energiforsyning, transport og posttjenester)").
- iii. Procurement regulations for the defence sector ("Anskaffelsesregelverk for forsvarssektoren") apply to goods, services, and material contracts, and to contracts related to construction and building. The regulations also apply to contracts on competitive tendering of business, hire, leasing and industrial and commerce co-operation.
- iv. In addition there are some distinct procedure rules in fields of less practical interest

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, both depend on the estimated value of the public contract. The different thresholds are laid down in the Public procurements regulation ("Forskrift om offentlige anskaffelser") and the Purchase regulations for the utilities sector ("Forskrift om innkjøpsregler i forsyningssektorene (vann- og energiforsyning, transport og posttjenester)"). The essential thresholds currently amount to (exclusive VAT):

- i. Public procurements regulation part I apply to all public contracts with a value minor than 500.000 NOK, regardless of contract value or type.
- ii. Public procurements regulation part I and II apply to contracts with a value greater than 500.000 NOK but minor than 1,65 million NOK for goods and services, and minor than 41 million NOK for building and construction works.
- iii. Public procurements regulation part I and III apply to contracts with a value greater than 1,65 million NOK for goods and services, and greater than 41 million NOK for building and construction works. However, for governmental public authorities the Public procurements regulation part III apply for goods and service contracts with a value greater than 1,05 million NOK. The threshold for part III is in accordance with EU threshold.
- iv. The Purchase regulations for the utilities sector base on the same system. Part I apply to all contracts under the regulations regardless of contract value or type. Part II apply to all contracts with a value greater than 3,3 million NOK for goods and service contracts, and 41 million NOK for building and construction work contracts.

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

Public contracts with a value greater than 500.000 NOK are to be announced nationally. Contracts with a value greater than 1,65 million NOK for goods and services, and greater than 41 million NOK for building and construction works (part III of the Public procurements regulation), are to be announced EU-wide. For the utilities sector, contracts with a value greater than 3,3 million NOK for goods and services, and 41 million NOK for building and construction work, are to be announced EU-wide.

Norway has an official website where all public contracts are announced when obliged by the national regulations. The website is for both nationally and EU-wide annunciations and is called Doffin. The EU-wide annunciations are in addition forwarded to the official European database for notifications.

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?

No, in order to submit a tender, a bidding consortium may not be required by the contracting authorities to assume a specific legal form; however, the bidding consortium selected may be required to do so when it has been awarded the contract, to the extent that this is necessary for the satisfactory performance of the contract.

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?

It is not required that a bidder or its sub-contractor have a registered office or branch office in Norway, therefore, a bidder theoretically can act completely from abroad. From experience, it makes sense for the award of a contract and for the satisfactory performance of the contract to have a temporary office in Norway, at least on the occasion of the award of the contract.

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?

In Norway contracting authorities may – as far as the objective of the contract requires – request evidence from domestic and foreign bidders. There are no general additional aspects that foreign bidders have to consider.

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

Yes, that is possible.

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 authority shall state in the contract notice which language(s) they accept for the tenders.

Tenders have to be in writing, signed, enclosed and labeled, and handed in directly or by post. The tender may also be submitted electronically or by fax, provided that the contract notice allows it.

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

All bidders are to be provided “adequate” time, so that all receive a fair chance to calculate their bid and to fulfil the formal requirements of the award of the contract. In the case of open procedures for public supply/service contracts, the minimum time limit for the receipt of tenders shall be 45 days from the date on which the contract notice was announced. In the case of restricted and other procedures for public supply/service contracts, the minimum time limit for the receipt of tenders shall be 30 days.

Other time limits may apply under specific circumstances and in urgent cases when it is not possible to use the principal time limit.

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

As a general rule, bidders can not claim reimbursement for the cost of submitting a bid. This may be different if the contracting authority demands drafts, designs, drawings, calculations etc. as part of the bid. If this is the case it will be stated in the contract notice or in the specifications valid for all bidders.

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?

Norwegian bidders are obliged by law to hand in tax certificates for tax and for value added tax (VAT).

For work that will be carried out in Norway the bidders are obliged by law to present a personal statement guaranteeing the fulfillment of Norwegian requirements according to health, environment and safety set by law.

In addition the contracting authority may establish its own selection criteria to select those bidders who demonstrate their suitability to perform the contract in terms of their economic and financial standing, as well as their professional and technical knowledge and ability.

When preparing a tender the bidder must be sure to submit all required answers, references/documents concerning the selection criteria completely and as requested. Otherwise, the bidder might be excluded due to formal reasons. These rules are very strict and even small nonconformities may lead to exclusion of the tender.

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?

Yes, all bidders may complain to the contracting authority that its rights were violated by alleged non-compliance with the provisions governing the award of contracts. The non-compliance might concern general aspects of the procedure, aspects of the specifications or other supplementary documents.

The contracting authority is obliged to inform all bidders before signing the contract, and to give them a reasonable time limit to complain against the award of the contract. There is no fixed time limit but it should be at least 10 days.

Unless the contracting authority takes remedial action concerning the claimed unlawful measures, the bidder may take legal proceedings against the contracting authority to stop the signing of the contract.

If the contract is already signed or the complainant has sufficient time before the signing, a possibility is to complain to The Complaints Board (Klagenemnda for offentlige anskaffelser). This board is only an advisory body but in most cases the contracting authority live up to their decisions. Regardless of the bidder complaining to this board or not, the bidder may take legal actions to establish if the contracting authority has violated the existing provisions or not. The legal proceedings may include an indemnity claim against the contracting authority.

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?

Bidders that don't satisfy the selection criteria and get excluded from the contest can complain against the decision. If the complain is not accepted the excluded bidders can complain to The Complaints Board or take legal actions. If necessary, the complainant may – under certain legal conditions – request the court of justice for temporary precautionary measures to postpone the signing of a contract until the exclusion question is settled. For the utility sector it is not possible for the court of justice to postpone the signing of a contract, but the court may sentence a conditional fine to try to prevent a potential infringement.

The same legal protection exists after the contract has been awarded. The competitors get more or less 10 days to complain after receiving the award letter.

This primary legal protection does not depend on criteria such as certain thresholds or the kind of goods, services etc.

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?

After the contract has been signed, the only two options are either to complain to The Complaints Board or to take legal actions. In case of a lawsuit the plaintiff may claim for compensation.

In order to receive compensation, it has to be proven that the contracting authority has infringed the regulations and that the plaintiff has been inflicted a financial loss as a result of the infringement.

17. Can your office

–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?

Yes, at our office we have a number of lawyers with extensive experience in the field of public procurement, both from the contracting authority and the supplier's point of view.

–Represent foreign clients seeking primary and secondary legal protection before all public offices/courts in your country?

Yes, our office has the competence to represent foreign clients in procedures for the award of contracts before all public offices/courts in Norway.

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

Contact person: Per O. Bjørnsen, bjornsen@bd.no