

Russia

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

Yes. The main laws regulating public procurement in Russia are the Civil Code of the Russian Federation and the Federal Law “On Placing of Orders for Delivery of Goods, Performing of Work and Rendering of Services for the State or Municipal Needs” of 21.07.2005 N 94-FZ (hereinafter also the «Federal Law N 94-FZ”). Several specific areas of public procurement are governed by the Federal Law “On the State Material Reserve” of 29.12.1994 N 79-FZ, the Federal Law “On Procurement and Delivery of Agricultural Products, Input Materials and Food for the State Needs” of 02.12.1994 N 53-FZ and the Federal Law “On the State Defense Contracting” of 27.12.1995 N 213-FZ. The Federal Law N 94-FZ stipulates that placing of orders may be carried out by auctioning (either competition or bidding, including electronic bidding) or without auctioning (by rate enquiries, with the sole supplier or at commodity exchanges). However, the law provides that placing of orders shall be carried out by auctioning except for the cases provided by the law.

It is to be noted that the sphere of public procurement is new for Russia. It is only emerging nowadays. There are a lot of challenges and difficulties, some of them result from the preparation for joining the World Trade Organization by the Russian Federation.

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

Yes. The procedures for the award of contracts vary depending on the kind of goods or services.

For example, there is a list of types of goods and services that require going through the bidding procedure as provided by the acts of the Government (e.g. agricultural products, food and drinks, textile products, oil refining products etc.). From July 1, 2010 bidding in respect of such goods will be carried out in the form of open electronic bidding. A contracting authority may also place orders in respect of the goods and services included in such list in the way of rate enquiry or with a sole supplier.

If the information about the goods, services etc. to be procured is a state secret, a competition may be only closed.

The Russian legislation on public procurement stipulates that the orders for state contracts concerning creation of works of literature, art and cinematography may be placed only in the form of an open competition subject to a special procedure specified in the law.

The law also provides a list of goods and services the contracts in respect whereof are to be concluded with a sole supplier (e.g. water supply and canalization, mobilization training, signal services for the needs of state defense and security etc.).

It is to be noted that failure to comply with the procedure of placing of orders may result in cancellation of the results of the auctioning.

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?

According to the Federal Law "On Placing of Orders for Delivery of Goods, Performing of Work and Rendering of Services for the State or Municipal Needs", if auctioning is carried out in the way of open bidding and the value of the goods, services etc. to be procured or rendered does not exceed 1 000 000 roubles, bidding may be carried out in the Internet. Placing of orders in the way of rate enquiry is possible only where the sum of the order does not exceed 500 000 roubles within a quarter of a year. However there is a number of exceptions set forth in the legislation. For example, a contracting authority may carry out rate enquiry from foreign bidders regardless of the contract sum, if the order aims at supporting of the activity of the contracting authority in that foreign state.

If the value of the goods, services etc. which are to be procured exceeds 50 000 000 roubles, contracting authorities require that bidders provide guarantee of execution of the contract. The amount of the guarantee varies generally from 10 to 30% from the value of the goods, services etc. to be procured or rendered.

Also, if the order for services within the area of construction, reconstruction or refurbishment of permanent buildings is placed in the form of bidding and the price of these services exceeds 50 000 000 roubles, the authority may require that only the potential bidder who has already rendered the services of this kind within five years prior to the end of the term of submission of bids may submit a bid and participate in the bidding.

Finally, the contracts the price whereof does not exceed 100 000 roubles are awarded without any special procedure.

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

Nowadays there are special printings containing information about the intended procurements on the federal, regional and municipal levels. For example, the official source concerning public

procurements in Moscow is the journal “Moskovskie Torgi”.

There are also Internet sources where the information concerning placing of orders may be found. The main Internet site on the matter in Russia is the Official Website of the Russian Federation on the Information about Placing of Orders (<http://www.zakupki.gov.ru>). Here one can find all the necessary information about public procurements. From January 1, 2011 the above-mentioned Website will be the only official source of information about planned procurements in Russia and since then there will be no printed sources.

However, in case of placing of an order in the form of a closed competition or bidding, the information about such order is not published. In this case the contracting authority invites potential bidders to take part in this closed competition or bidding in writing.

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. Any legal entity regardless of its legal form, form of property, location, place of origin of the capital, as well as any natural person, including individual entrepreneurs, may take part in the auctioning.

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

No, it is not possible. Only one specific bidder may submit an offer. The only exceptions are the cases when the subject of a procurement is acquisition of rights to a work by a composite author or rendering of services by concert or dance groups, bands. In such cases all the members of the composite author or any other creative group may act as contractors. With that the order is placed without auctioning in the way of simple conclusion of a contract.

At the same time, any contractor performing his obligations may get subcontractors involved in the work pursuant to the Civil Code of the Russian Federation.

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?

There are no requirements in the Russian legislation providing that a potential bidder needs to have a registered office or a branch office in Russia. Therefore, tenders may be submitted directly from abroad. However, if a foreign bidder is awarded the contract he will have to abide by all the requirements of the Russian law. Such bidders usually have to establish their commercial presence in Russia in any form provided by the Russian legislation.

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?

Foreign bidders must provide due translations into Russian of documents confirming registration of them as legal entities or individual entrepreneurs. These documents must be confirmed by a notary public or an official with similar powers. It is to be noted that these documents must be apostilled.

Generally, domestic bidders do not receive any preferences in the award of contracts. Foreign bidders have the same rights as domestic bidders, if there are the same provisions in the legislation of those foreign countries applicable to the Russian bidders. However the legislation provides an opportunity to set priority of domestic bidders in respect of certain

types of goods (e.g. agricultural products, products of metallurgical industry etc.).

Furthermore, in the area of state security or defense foreign bidders may take part in the auctioning only if the goods or services offered by such bidders are not available in Russia or the available goods or services do not correspond to the requirements set by the contracting authority.

Therefore, only Russian goods and services have preference, not Russian bidders.

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

It is possible, but all the members of the consortium must satisfy the requirements imposed by the Russian legislation. And, as it was mentioned above, if the contract concerns the matters of the state security or defense, access of foreign bidders is restricted.

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?

Tenders have to be in the written form and posted in a sealed envelope or as an electronic document. However, if auctioning is carried out in the form of a closed competition or bidding, the bids may not be submitted in the electronic form.

bid must be signed by an authorized person; in particular, if the bid is in electronic form, it must be signed by an electronic signature. The language used for submitting bids is Russian only. It is to be noted that all the procedures in Russia are very formalistic; therefore all the documents must be executed in compliance with the requirements set by the Russian legislation.

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

The Federal Law N 94-FZ stipulates that the terms of submission of bids are provided by the contracting authority in the documentation of the competition or bidding, depending on the way in which the placing of orders is carried out.

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

No, the costs for preparing bids cannot be claimed.

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 legislation provides certain requirements to the bidders: (1) compliance with the legal requirements to the persons that supply goods or rendering services being the object of auctioning; (2) absence of any liquidation or bankruptcy proceedings in respect of the bidder; (3) absence of administrative suspension of activity of the bidder; (4) absence of any indebtedness concerning taxes or other mandatory payments to the state budget. The contracting authority may also require that the bidder must not be included into the register of unfair suppliers kept by the Federal Antimonopoly Service of the Russian Federation.

The Government may set additional requirements to bidders if the order concerns supply of goods or rendering of services concerning state defense or security. The selection criteria are specified in the auctioning documentation.

In case of a competition, the award of a contract is received by the bidder that offered the best conditions of performing the contract. The criteria of defining the best value is provided by the Federal Law "On placing of orders for delivery of goods, performing of work and rendering of

service for the state or municipal needs". In case of auctioning, the party that offered the least price of performing the contract receives the award.

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?

Nowadays there is no specific liability in *contrahendo* in the Russian legislation (but it is likely to appear in the near future due to the reforms of the civil legislation). The liability depends on the fact of violation of rights or rules of law rather than on the fact of awarding of the contract.

A bidder may challenge actions or omission of the contracting authority and other organizations performing the functions of organizing auctioning by filing a complaint to the appropriate territorial body of the Federal Antimonopoly Service. A respective complaint must be filed at any time within the periods specified in the legislation.

The complaint is considered within five business days since it was filed. While the complaint is pending, the authority considering it may order suspension of placement of order until a decision is made. If such a measure is taken, a contract cannot be awarded. The decision made must be communicated to the bidder who filed the complaint and to the authority or organization whose actions or omission are challenged.

It is to be noted that filing a complaint to the Federal Antimonopoly Service does not prevent the bidder from challenging such actions or omissions in an Arbitrazh court. However, if the above-mentioned period specified in the legislation has expired, the bidder may file a complaint only to an Arbitrazh court.

Placement of orders may be held invalid only by a court or by the Federal Antimonopoly Service (if the contract has not been awarded yet). The Federal Antimonopoly Service often applies to courts itself.

If a bidder decides to file a complaint to an Arbitrazh court, he should do that within three months since the moment when he found out or must have found out that his rights had been violated. The bidder may request the court to suspend the placement of order or execution of the awarded contract as an interim measure until the final decision on the merits is made.

The case is to be considered within two months since the complaint was received by the Court. But these periods are usually extended due to overload of courts. Moreover, possible appeals also extend the said periods.

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?

There is no primary legal protection in Russia.

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?

As it was already mentioned, liability in Russia depends on the fact of violation of rights or rules of law rather than on the fact of awarding of 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 may give legal advice to foreign clients on the matters of public procurement in Russia and represent foreign clients in all Russian public offices (including the Federal Antimonopoly Service and its territorial bodies) and courts.