

## **Slovakia**

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

Yes, the Slovak legal system particularly the Act on Public Procurement No. 25/2006 Coll. (hereinafter referred to as “APP”) regulates public award of supply contracts, building works contract and service contracts. APP fully implemented European Community legislation related to the public procurement.

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

Yes, there are some differences in procedures for the award of the contract according to the type of goods, works and services to be procured.

#### **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 procedure depends on the estimated value of the contract. APP distinguishes procedures for the award of contracts upon financial limits and sets rules for estimation of value of the contract. The APP divides the contracts into four categories, i.e. small-value contracts, contract below the threshold, contract below the limit and contract above the limit. Article 4 of the APP specifies the thresholds of the contracts in detail. The essential thresholds (for contracts above the limit) are the following.

– § 4 sec. 2. a) APP - where a supply contract is awarded by a contracting authority pursuant to Article 6 (1) (a); for a contracting authority in the defence sector in the event of a contract for the delivery of supplies listed in Annex 4 of the APP: 133 000,- EUR

– § 4 sec. 2. b) APP - where a supply contract is awarded by a contracting authority pursuant to Article 6 (1) (b) to (e), for a contracting authority in the defence sector in the event of a contract for the delivery supplies not listed in Annex 4 of the APP: 206 000,- EUR

– § 4 sec. 2. c) APP - where a service contract is awarded by a contracting authority pursuant to Article 6 (1) (a) except a service contract referred to in (e) § 4 sec. 2 of the APP: 133 000,- EUR

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– § 4 sec. 2. d) APP - where a service contract is awarded by a contracting authority pursuant to Article 6 (1) (b) to (e) of the APP: 206 000,- EUR

– § 4 sec. 2. e) APP - where a contract is awarded for the provision of a service included in category 8 of Annex 2, category 5 telecommunications services pursuant to the Common Procurement Vocabulary<sup>7</sup> (hereinafter referred to as the CPV) corresponding to CPC 7524, 7525, 7526 codes and a service listed in Annex 3 awarded by a contracting authority: 206 000,- EUR

– § 4 sec. 2. f) APP - where a supply contract or a service contract is awarded by a contracting entity: 412 000,- EUR

– § 4 sec. 2. g) APP - in the event of a building works contract. 5 150 000,- EUR

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

The obligation of the contracting authority to inform the market about the intended procurement depends on the type of the contract;

a) small-value contract - the contracting authority is not obliged to publicly inform the market

b) contract below the threshold - the contracting authority shall issue the contract notice publicly (on the web page of the contracting authority)

c) contract below the limit - the contracting authority shall send a contract notice to the Office for Public Procurement (hereinafter referred to as the “Office”) to be published in the Slovak Journal of Public Procurement (hereinafter referred to as the “Journal”)

d) contract above the limit - the contracting authority shall send a notice to the Office for Official Publications of the European Communities (hereinafter referred to as the “Publications Office”) and to the Office for publication. A prior notice and a periodic indicative notice may be published on the internet in the contracting authority’s profile or in the contracting authority profile according to article 23 section 2 of APP.

**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 accordance with the APP, a candidate (potential bidder) shall be a natural person, a legal entity or a group of such persons that delivers suppliers, executes building works or provides services on the market and is interested to participate in a restricted procedure, in a negotiated procedure or in a competitive dialogue, or has taken over tender documents in an open procedure (i.e. the political party may not be a candidate). The criteria for selection of participants must not restrict participation through a requirement concerning its legal form. Neither a contracting authority nor a contracting entity may request that a supplier group establish legal relationships before a tender submission. A contracting authority and contracting entity may however request to establish legal relationships in the event that the tender of a supplier group has been accepted and establishment of legal relationships is necessary due to a proper contract performance (Article 31 of the APP).

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

A supplier group may take part in the public procurement. A supplier group shall demonstrate the meeting of the conditions of participation in public procurement regarding personal standing for each member separately. A supplier group shall demonstrate the meeting of the conditions of participation in public procurement regarding financial and economic standing and technical abilities and professional suitability shall be demonstrated jointly. Each tenderer shall prove the entitlement to supply goods, to execute the buildings works or to provide services in connection only with that part of the contract that has to be secured by him. Each tenderer (bidder) may submit one tender only. In the same contract award procedure, a tenderer must not be a member of a group of the suppliers submitting a tender. The contracting authority and contracting entity will exclude a tenderer, who is simultaneously member of a group of the suppliers submitting a tender (Article 39, section 5 of the APP).

**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 prohibited by the law to submit a tender for the contract directly from abroad and it is not required for the bidder to be established in the Slovak Republic. The contracting entity may exclude a supply tender where the share of products originating in a non-EU country pursuant to a special regulation represents more than a half of the total value of the products tendered. It applies for the contracts above the limit (Article 75 of the APP).

**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?**

The same criteria apply to the domestic and foreign persons who intend to take part in the public award of contracts. (as specified in question 13). The contracting entity shall assess the meeting of the conditions of participation in accordance with the rules it has specified. In the event that a tenderer or candidate is not established in the Slovak Republic and the country of his establishment does not issue some of the documents necessary to demonstrate the meeting of the conditions for participation in the public award of contracts concerning the personal situation or does not issue equivalent documents, such documents may be replaced by a solemn declaration pursuant to the regulations in effect in the country of his establishment. Where a tenderer or candidate from a Member State is authorized to exercise the requested activity in the country of his establishment, he must not be excluded by the contracting authority and contracting entity by

the reason that a certain legal form is requested to perform the required activity on the basis of law.

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

Yes, it 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?**

Tenders and other documents and documents in public procurement shall be submitted in the state language. In a contract notice or in a notice used as a call for competition, the contracting authority and contracting entity may allow the tender submission in another language as well (Article 19 of the APP). If the foreign tenderer is submitting documents from its country of origin to demonstrate the conditions of participation mandatory the documents need to be submitted in the original language and in the Slovak translation.

In respect of the form required, notice, submission of documents and communication between a contracting authority or contracting entity and a tenderer or candidate may be carried out in writing by post, fax, by electronic means or by telephone or by a combination of those means. The contracting authority and contracting entity shall determine the means of communication so that they are generally available and that the opportunities of tenderers or candidates to participate in public procurement are not restricted (Article 16 of the APP).

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

The APP stipulates that a tender shall be delivered in the tender submission period. A tender delivered after the expiry of such tender submission period will be returned to the tenderer unopened, in case it was delivered in the written form or it will not be declassified, in case it was submitted in electronic form. By defining the tender submission period the contracting authority and the contracting entity shall take into account complexity of the object of the tender, time period necessary for the submission of the bids, and the limits set by the APP, e.g. the tender submission period shall be at least 45 days from the date of dispatch of the contract notice to the Publications Office, or 30 days from the dispatch of the contract notice to the Publications Office etc. in case of the contracts above the limit. Further conditions are stipulated by the APP.

**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 cannot claim reimbursement for the cost of submitting a bid.

**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**

Yes, the bidders have to demonstrate the suitability to perform the contract in respect of their economic and financial standing, professional and technical knowledge and ability.

*Criteria for evaluation of bidders (conditions of participation).*

Personal criteria shall be applied in case of contract below the threshold, contract below the limit and contract above the limit.

Other criteria shall be applied in case of contract below the limit and contract above the limit.

Personal situation - only a person may take part in the public award of contracts who meets the conditions of participation concerning his personal situation:

- a) neither he nor his statutory body or a member of his statutory body has been lawfully convicted for the offence of corruption, for the offence of damaging the financial interests of the European Communities, for the offence of laundering of the proceeds of crime, for the offence of establishing, plotting and supporting a criminal group, or for the offence of establishing, plotting and supporting a terrorist group,
- b) neither he nor his statutory body or a member of his statutory body has been lawfully convicted for an offence concerning the conduct of business,
- c) is not subject of proceedings for the declaration of bankruptcy, is not bankrupt or being in liquidation, nor a bankruptcy petition has been rejected against him due to lack of estate,
- d) does not have a history of arrears in the payment of contributions to health insurance, social insurance and contributions to seniors pension savings scheme to be collected by a judicial execution of a decision,
- e) does not have a history of tax arrears to be collected by a judicial execution of a decision,
- f) is authorised to deliver supplies, execute building works or provide a service,
- g) he has not committed any grave professional misconduct over the preceding three years, which can be proven by the contracting authority and contracting entity.

Financial and Economic Standing - as a rule, financial and economic standing may be proven by

- a) statement of a bank or foreign bank branch, which may be a commitment of a bank or foreign bank branch to extend a credit,
- b) blue card of professional liability insurance or blue card of business liability insurance in the event such insurance is required,
- c) balance sheet or statement of assets and liabilities or data there from, or
- d) an overview of the total turnover or an overview of the turnover reached in the field related to the object of contract, for not more than three economic years, for which they are available depending on the establishment or commencement of the activity operation.

To demonstrate financial and economic standing, a tenderer or candidate may use financial resources of another person regardless of their legal relationship. In such event, he shall prove to the contracting authority or contracting entity that in time of the contract fulfillment he will be entitled to dispose with the resources of the person, whose position he is using to evidence his financial and economical standing.

Technical Ability or Professional Suitability - technical ability or professional suitability may be demonstrated by a document or by documents depending on the type, quantity, importance or use of the supply, building works or services, according to the rules stated in Article 28 of the APP. To demonstrate one's technical ability or professional suitability, a tenderer or candidate may use technical and professional capacities of another person regardless of their legal relationship. In such event, he shall prove to the contracting authority or contracting entity that in time of the contract fulfillment he will be really entitled to dispose with the capacities of the person, whose position he is using to evidence his technical ability or professional suitability.

#### *Criteria for evaluation of tenders*

Article 35 of the APP sets criteria upon which contracting authority and contracting entity shall evaluate the tenders. The tenders shall be evaluated on the basis of

- a) economically the most advantageous tender, or
- b) the lowest price (most common).

The criteria for the evaluation of tenders shall be specified

- a) by the contracting authority in a contract notice,
- b) by the contracting entity in a notice used as a means of calling for competition, in an invitation

to confirm repeated interest, in an invitation to tender, or in an invitation to negotiate, or in tender documents.

Where tenders are evaluated on the basis of economically the most advantageous tender, the contracting authority and contracting entity shall specify the individual criteria relating to the object of contract, which are in particular the quality, price, technical execution, esthetical, functional characteristics, environmental characteristics, operating costs, cost effectiveness, post-warranty service and technical assistance, delivery date of the supplies, term of the construction, term of the service providing. In addition to the individual criteria, the contracting authority and contracting entity shall also specify the rules for application of the criteria which are to ensure a quality-based distinction of meeting of the individual criteria. The rules for application of the criteria specified by the contracting authority and contracting entity must be non-discriminatory and must support fair competition. The contracting authority and contracting entity shall determine a relative weight for each of the criteria.

**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?**

No restrictions shall apply to foreign bidders.

*Request for remedy*

There is a primary legal protection under the APP. A tenderer, candidate, participant and the person who believes that his rights or rightfully protected interest have been or might have been affected by the course of action of a contracting authority, contracting entity or by the person defined in § 7 f APP may file a request for remedy concerning:

- a) the intention to conclude the contract or concession contract on the works published according to § 22 section 7 of APP, the conditions set out in the notice according to § 50 section 4, § 67 section 2, § 77 or § 105 section 5 of APP,
- b) the conditions set out in the tender documents or other documents provided by the contracting authority, contracting entity, or by the person defined in § 7 f APP during the tender submission period or concerning the conditions set out in the competition conditions in the design competition provided in the design submission period,
- c) the conditions set out in the call for submission of tenders or designs, or
- d) the selection of candidates in a restricted procedure, in a negotiated procedure or in a design contest, or
- e) exclusion of a tenderer, candidate or participant. or
- f) the result of evaluation of tenders or designs.

The request for remedy must be in written form and must include all information named in APP (Article 136 section 2). A written request must be delivered to the contracting authority, contracting person or person defined in § 7 of APP within period specified in Article 136 section 3 (e.g. ten days from the date of publishing the notice).

*Lodging of a protest*

In case, the tenderer, candidate or other person as specified in the APP may lodge a protest. Such protest must be preceded by filing of a request for remedy. According to article 138 section 19 of APP the bail shall be paid. Article 138 of the APP explains the procedure in detail. In case of protest submitted according to Article 138 section 2, letter g the Office, until the decision regarding protests, may issue a decision of preliminary ruling to suspend the action of the supervised person (contracting authority, contracting entity) for a time not longer than the delivery of the Office decision regarding protests. This procedure applies to the contracts below the limit,

the contracts above the limit, in case specified I article 137 section 2 of APP this procedure also applies in case of contracts below thresholds.

**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 possibility of the primary legal protection depends also on the type of the contract. The conditions are described in question 14 above.

**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?**

*Damage claims*

There is a secondary legal protection in case a bidder suffers damages due to an irreversible act contrary to public procurement law. He can claim for damages at civil court providing that

- a)there is evidence of an act contrary to public procurement law, which is a violation of provision that protects bidders and
- b)through this the bidder who is supposed to be protected by the provision is affected (and suffered damage).

*Audit of Contract Award Procedure*

The Office shall audit the contract award procedure prior to the conclusion of a contract, license contract or framework agreement and in the event of audit prior to closing a design contest on its own initiative, based on the supervised entity initiation on the execution of the supervision of the contract awarded by him and based on the Government office of the Slovak republic initiation. The Office shall audit a contract award procedure after the conclusion of a contract, license contract or framework agreement, in the event of audit after closing a design contest and in the event of audit after the cancellation of contract award procedure and design contest based on the initiative of natural persons and legal entities that are not entitled to file protests, on the civil service bodies initiative and on its own initiative.

*Motion to Nullify a Contract*

Where the supervised entity has concluded a contract, license contract or framework agreement contradictory to APP, the Office may file a motion to have it nullified by the court within the time limit of one year from its conclusion.

A tenderer, candidate, participant or the person, who might have an interest to obtain the concrete above limit contract and whose right or rightfully protected interest were or might be affected by the procedure of the contracting authority or contracting entity can after the conclusion of the contract, license contract on the works or framework agreement ask the court to determine nullity of the contract, license contract on the works or framework agreement. The motion shall be submitted within the term defined in article 148a section 9 of APP.

**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?**

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

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

Our office is competent to:

- give legal advices to foreign clients concerning bid preparation in the Slovak republic
- in this matter represent foreign clients before all public offices/courts in the Slovak Republic
- the contact persons for relations concerning public procurement law is Tomáš Kamenec