

Thailand

Vovan & Associés - Thailand

Silom Complex, 17th Floor
191 Silom Road, Bangrak
Bangkok 10500
Thailand

Tel: +66 (0)2 632 0180

Fax: +66 (0)2 632 0181

E-mail : vovan.bangkok@vovan-associés.com

Website: www.vovan-associés.com

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

Yes but the procedure may vary depending on the public person which issues the procurement:
–the ministries and affiliated administrations must comply with the regulations adopted by the Prime Minister's Office;
–the local administrations must comply with the Regulation on Procurement of Provincial Administration issued by the Ministry of Interior;
–State owned enterprises have their own procurement regulations.

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

No.

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 produced (thresholds) and if so, what are the thresholds?

The traditional procurement methods are used only for contract with a value below 2 million bahts (about USD 66,000). Above this threshold, the electronic bidding procedure applies. In an electronic bidding, the bidders have to hand to the procuring authority a set of documents detailed in the terms of reference (TOR). Once the procuring authority has determined the qualified bidders, such bidders can take part to the electronic bidding by entering their bid in the administration's computer system.

It should be noted that the new Thai government might issue a series of invitation for bidding related to infrastructure projects for which a special procedure applies under the *Regulation related to Public Mega-Projects for development of the country (2006)*.

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

The contracting authorities need to use several channels to inform the market about the procurement, such as administrative publication, newspaper, radio and television. Besides, since most the electronic bidding applies in most cases, the government has made a website which posts all the biddings (www.goprocurement.go.th).

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, unless otherwise specified in the TOR.

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

Yes, consortiums are allowed to submit joint offers, as general contractor and sub-contractor as well. However, foreign participants need to take into considerations the limits set by the foreign investment regulations (Foreign Business Act).

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?

Although the e-bidding procedure may allow participants to take part to the bidding from abroad, the terms of reference will often require or imply a presence in Thailand. In case the foreign bidder does not wish to set up a legal entity in Thailand, it is still possible to fulfill the criteria through a consortium in which the Thai party will often act as the leader.

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?

There is no discrimination between Thai and foreign bidders with the reserve of the provisions of the Foreign Business Act and the TOR. Now, the foreign bidder must be ready to provide documents to evidence its identity, the person to act on his behalf as well as its business credentials.

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

Yes.

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?

In principle, all the tender documents must be in Thai. It should be noted that the original documents written in English by a possible foreign bidder will be enclosed to the tender along with their Thai translation.

The procuring authority will review the bidding documents to determine the qualified bidders who will take part to the electronic auction.

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

Yes. The Regulation issued by the Prime Minister's office provides for a minimum period of 21 days which may be extended by the authority calling for bids.

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.

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 Thai regulations do not set minimum criteria but guidelines, such as consideration of the price, quality and preference that should be given to Thai products. In practice, the TOR provides conditions of eligibility based on criteria that maybe very precise, such as special certifications.

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

Yes. There is no discrimination between the foreign and the domestic bidder. In case of irregularities in the bidding procedure, an unsuccessful bidder may submit a complaint at the government level, i.e. the contracting authority, the Council of State of the Prime Minister's Committee in charge of Procurement. At this stage, the bidding procedure or the decision to award the contract is suspended.

If the plaintiff does not obtain satisfaction, such plaintiff can then bring the action before the administrative court.

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

No, the right to legal protection is not to subject to conditions.

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?

Inapplicable.

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?

Yes, our office has experience in advising clients on procurement contracts, draft of joint-venture and consortium agreements, electronic biddings and dispute resolution in and out of courts.

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

Mr. Frédéric Favre, Partner

Frederic.favre@vovan-bangkok.com

Ms. Laxami Warapasart, Partner

Laxami.warapasart@vovan-bangkok.com