

Public Procurement Law

Guidelines for contracts with public authorities

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2nd edition

Introduction

Globalisation is one of the key topics in discussion worldwide. Undertakings are operating not only in their home countries but more and more cross-border. Cross-border transactions demand advice on the laws of other countries, a professional network as Legalink provides for. Considering what kind of business areas are involved in the global markets, one part of cross-border opportunities should be paid more attention in the future: participation on contracts with public authorities all over the world, which is a huge market.

As long as undertakings are not organized with foreign subsidiaries in the particular state involved, business in this market seems to be out of range or at least very difficult to handle and borders still are felt as high hurdles. The Legalink network with its special know-how in this field of law can help undertakings, who are interested in going into this cross-border business area, and provide for best advice.

This booklet shall give guidelines for practitioners on the basis of 17 frequently asked questions concerning contracts with public authorities (see p. 10). The answers hereto may give you an overview* with regard to the national law of many countries represented by the Legalink network. The answers are ordered by countries in alphabetical order.

If you are interested in concrete business projects, please do not hesitate to contact the member law firms of Legalink in the specific states concerned or contact us in Berlin. We would be pleased to organize for you the contacts worldwide within our network Legalink.

The 2nd edition of the booklet comprises updates and contributions of some more countries.

Berlin, March 2008
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*All answers in this booklet do not constitute legal advice as to the Legal Position of the countries represented by the Legalink members in this booklet and specific advice should be sought in relation to each particular set of facts and circumstances.

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Questions

1. Does your legal system provide specific procedures for the award of contracts by contracting authorities?
2. Do the procedures for the award of contracts depend on the kind of goods, services etc. which are to be produced?
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?
4. In what way does the contracting authority have to inform the market about the intended procurement?
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?
6. Are bidders allowed to submit joint offers, *e.g.*, as general contractor and subcontractor or as bidding consortium?
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?
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?
9. Is a multinational bidding consortium allowed to submit a bid?
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?
11. Are there any legal regulations governing the time within which bids have to/can be submitted to the contracting authority?

- 12. Can the bidders claim their costs for preparing their bid? If so what are the conditions for, and the maximum amount of reimbursement?**
- 13. Are there any selection criteria set by law that bidders have to satisfy in order to receive the award of a contract and can the contracting authority establish its own additional selection 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?**
- 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?**
- 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?**
- 17. Can your office**
 - give legal advice to foreign clients concern in 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!**