

France

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

The award of contracts is in France regulated by national specific procedures but is also influenced by European regulations like the latest law adopted in France in 2006, legislated according to the requirements of the EU directives. In any case, the EU relevant standards of the procurement procedures are enforced in the French legal system. Even if the EU directives are not entirely implemented in the French legislation, the national rules will always be interpreted regarding European regulations.

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 are in France different according to the type of performances: services, public works or supplies contracts. All the procedures are regulated in

France by the public procurement contracts Code, but special industries like financial market (purchase or sell market of assets), work of art market or commodity market, specified in articles 136 to 139 of the code are excluded of his application in accordance with EU Directives 2004/17/EC and 2004/18/EC of 31 March 2004.

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 value of the goods or services determines in France the legal procedure to use for the award of contracts. The article 26 of the French public procurement contracts Code establishes the following essential thresholds:

- (i) EUR between 206.000 and 5,150.000 for public works contracts; For these contracts, the adjudicator is free to chose among all the procedures precised by the article 26 of the public procurement contracts code.
- (ii) EUR 5.150.000 - for public works contracts;
- (iii) EUR 133.000 - for supply/service contracts awarded by the french State;
- (iiii) EUR 206.000 - for supplies and services contracts of local authorities.
- (iiiii) public supply/service contracts for professional services; same limits as (ii) – (iii)

A decree dated 19th December 2008 had increased from EUR 4,000 to EUR 20,000 the threshold below which duties of public announcement/notification and setting in competition do not apply.

The Conseil d'Etat quashed, in a decision dated 10th February 2010, this provision, holding that it violated the general principles of public procurement, which are the right of access, equal treatment, and transparency of proceedings.

Beyond the EUR 4,000 threshold, and up to the aforesaid thresholds, a flexible procedure applies, leaving a great choice to public authorities for the criteria of selection of the bidders.

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

The contracting authority has to notice public contracts in Official French newspapers or in the Supplement to the Official Journal of the European Union (OJS) each time the contract's value exclusive of value added tax (VAT) is equal or greater than the thresholds listed in answer (A3).

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, a potential bidder has no obligation to have a specific legal form. But the bidder has a possibility according to the article 51 of the public procurement contracts Code, to submit application as a joint group. In the event where the bidder is a group of companies, the awarding authority may require the companies to be jointly liable.

However, in general the potential bidder is required to keep during the execution of the contract the legal form he has at the moment of the submission.

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

Yes, both are possible. The Public authority may require the creation of a joint group (consortium, co-contractors) but can also forbid bidders to use subcontracts for specific reasons. Local

authorities have also the power to prohibit any subcontracts.

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?

The French law allows submission directly from abroad. It does not require a registered office or branch office in France from the bidder or its sub-contractor but it could be more convenient from a practical point of view.

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?

For reasons of national secrecy, some contracts may be saved for those who obtained a preliminary certification.

In France, the documents required from domestic and foreign bidders are established by the article 45 of the public procurement contracts Code. None other condition of admissibility than those stipulated in said article can be required from the prospective bidder. In support of applications and according to the article 45, prospective bidders are required to produce the following documents:

–Information which facilitates evaluation of the prospective bidder's professional and technical capabilities and financial standing, and documents attesting the powers conferred on the person authorised to commit the prospective bidder and, where defence contracts are to be awarded, they must give their nationality.

–Information concerning the prospective bidders' know-how in regard to environmental protection. Compliance with the employment obligation regarding specific rules of French Labour Code, like the law on handicaps adopted the February, 11th 2005, can also be required.

–In order to prove its professional and technical capabilities and financial standing, the prospective bidder may request that the professional and technical capabilities and financial standing of one or more subcontractors also be taken into account. In which case, it must prove the capabilities and standing of the said subcontractor(s) and show that they are available to perform the contract.

–If the prospective bidder is under receivership, a copy of the judgement(s) rendered to that effect;

–A sworn statement, duly dated and signed by the candidate, to the effect that:

–It has met its obligations in terms of tax, contributions and social-security obligations;

–It has not been barred from tendering;

Bidders established in a State other than France must produce a certificate issued by the institutions of the country concerned. If that country does not issue such certificates, it may be replaced with a sworn statement, or, in States in which such statements do not exist, with a solemn declaration made by the person concerned before the relevant judicial or administrative authority, a notary or a qualified professional body in that country.

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

Yes, a multinational bidding consortium is allowed to submit a bid if all its members are stated and if one of them has been given specific powers from the others to contract and execute the contract.

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?

A French translation of the documents submitted by an authorised sworn translator may be required.

Even if most of the time, the submission will have to be written in French, the language and the form required to submit are always indicated in the public contract notice.

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

The deadline for the receipt of the bids, as the language and the form to submit, is precised in the public contract notice. The minimum time limit for the receipt of tenders shall be 52 days from the date on which the contract notice was sent, and 37 days for limited procedures. When notices are drawn up and transmitted by electronic means the time can be shortened.

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 bidders can not claim their costs for preparing their bid, except if the bidders answer to a specific request of the public authority. It can be the situation of a public contract which needs architects' advise for example, to proceed to an evaluation. In such a case, the public authority will reimburse adequate costs of these fees 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?

As already said in question (8), the bidders are required to produce information which facilitates evaluation of the prospective bidder's professional and technical capabilities and financial standing, and documents attesting to the powers conferred on the person authorised to commit the prospective bidder. To get a chance to receive the award of the contract, bidders must produce official documents but also references. The most interesting economic offer must be chosen according to the sole criteria established in the call for bids. However, in order to allow small, medium and new companies to have access to public contracts, the references and financial capacity criteria are not the only ones retained to select the final bidder.

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?

The French legal system provides legal protection for bidders. The most current situations of bidder's rights violations concerns the general aspects of the procedure (documents required, time limit etc..) and the obligation of the adjudicator to inform at least 10 days before the award of the contract about its intention to proceed to a new selection, and to inform as soon as the final bidder is selected, all the others bidders of the refusal of their applications. In France, the bidder will have to go to the administrative Court in order to institute proceedings. If the administrative Court receives the claim, it could required from the public authority to modify or to set aside the unlawful measures. If the subject of the tenderer's claim is the intended award to a competitor, the contracting authority must not award the contract as originally intended before the conclusion of the proceedings. If notwithstanding the contracting authority awards to contract, said award is void. Both sides may file an appeal subject to a time limit against the decision of the administrative Court of appeal and even the State Council (Supreme Administrative Court).

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?

In France the legal protection depends on the value of the contract which have to be greater than certain thresholds. There is no specific regulations concerning primary legal protection when the value is smaller.

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?

The secondary legal protection exists in France in situations where the value of the goods or services is smaller than the thresholds. Like in the primary legal protection, the bidder have to institute proceedings with the administrative Court. Receive a damage award is very rare because the administrative Court must be convinced of the evidence of an act contrary to public procurement law, a violation of the bidders legal protections which affected the bidder.

By a decision dated 16th July 2007, the Conseil d'Etat (i.e. the highest French administrative court) granted to third parties to a contract the ability to request from the administrative judge the cancellation of such contract.

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!

Yes, our office has the competence to advise clients on bid preparation in FRANCE and represent foreign clients in procedures for the award of contracts before all public offices/courts in the State of France.

Contact in our office is the Public Affairs department,
Contact: Carine Chaix,
e,sq.