

Panama

Rosas y Rosas

Via Espana 122 - Oficina 1600
Edificio Banco de Boston
Apartado 8240
Panama 7

Tel: (507) 264 9177
Fax: (507) 264 0269
E-mail: jcrosas@rosaslaw.com
Web site: www.rosaslaw.com

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

Indeed. A new Law on Public Contracting was enacted in 2006 with the purpose to improve on the previous legislation regarding public procurement and to adapt to changes in the technological sector by using the Internet to publicize public bids.

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

The differences in the procedures are mainly based on the amount of the bid, rather than the type of products.

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?

The thresholds are the following:

- For purchases of up to US\$30,000, minimal formalities;
- The Ministry of Economy and Finance approves direct purchases of up to US\$300,000, rather than through a public act;
- The National Economic Council (certain Ministers of the Cabinet) between US\$300,000 and US\$3,000,000;
- The Cabinet approves direct purchases over US\$3MM.

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

Via Internet. The site is <http://www.panamacompra.gob.pa/>

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?

There is no distinction between natural and juridical persons in Panama. However, in practice the requirements of past experience, size of the purchase, or other conditions are sometimes met only by established enterprises.

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

Bidders can submit offers as part of a consortium or loose joint venture, created only for the purpose of submitting their proposal, in which each will contribute specific qualifications to complement the other members. It is established that each member will be individually responsible for the obligations arising out of the proposal or the contract itself. The members shall designate a person who will represent them in the different instances of bidding and formalization of a contract.

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?

While there is not an obligation to potential bidders to have a registered office or branch office in the country, they shall provide the documentation that reflects their existence abroad and appoint a representative who will sign and submit the proposal, as there is a formal act in which the proposals will be received and opened.

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?

As commented above, proposals cannot be submitted from abroad and there is typically no preference to domestic bidders.

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

Bids from multinational consortia are allowed and in cases of complex projects encouraged according to the conditions of 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?

The official language in Panama is Spanish, but the authorities will allow, especially in the prequalification stage, that documents pertaining to experience and previous performance of the bidder be submitted in English language. It is submitted in text along with a digital copy.

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

The place and time for prequalification documents, or the bid itself, are clearly expressed in the procurement documents.

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

Bidders cannot claim for reimbursement of the costs involved in preparing their bid except for the fee that was paid to obtain the terms and conditions of the bid, but only if a proposal is submitted.

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?

There are general selection criteria established by law, and specific ones that the contracting authority will include in the terms and conditions prepared for a particular bid.

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?

There are legal actions that can be filed before the contract is awarded, or afterwards. In the first case (Accion de Reclamo) it will be a more straightforward procedure before the Directorate of Public Contracting, and in the second case, (Recurso de Impugnacion) before the Administrative Tribunal of Public Contracting (formed by several Magistrates). In both cases, the party that alleges wrongdoing will submit evidences and arguments that sustain its allegation. In the case of the latter a bond equal to 10% of the proposal – without exceeding US\$100,000 -, will be required.

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 primary legal protection (Accion de Reclamo), is not subject to any particular condition, besides the need to be filed prior to the granting of the contract.

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?

For the filing of secondary legal protection (Recurso de Impugnacion), there are no further

conditions beyond the posting of a bond, as explained above.

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?

We are in position and do provide legal advise on a regular basis to foreign clients in the steps leading to the submitting of proposals in public bids.

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

We have represented clients seeking legal remedies after a proposal has been submitted, or a public contract has been granted, as well as during the execution of a contract for claims submitted by any of the parties.

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

Juan Carlos Rosas
Rolando Guevara