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# Guidelines for Contracts with Public Authorities

5th Edition

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# Guidelines for Contracts with Public Authorities

2023 Update

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Public  
Procurement

5th Edition

Contributions  
from the following

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Hassans  
Gibraltar

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

Yes. The procurement process in respect of public contracts in Gibraltar is governed by subsidiary legislation made under s.75 of the Public Finance (Control and Audit) Act 1977. These are the following:

- the Procurement (Defence and Security Public Contracts) Regulations 2012 (the “DS Regulations”);
- the Procurement (Public Sector Contracts) Regulations 2016 (the “PSC Regulations”);
- the Procurement (Concession Contracts) Regulations 2016 (the “CC Regulations”); and
- the Procurement (Utilities Contracts) Regulations 2016 (the “UC Regulations”).

(each a “Regulation”, and together, the “Procurement 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 Regulation and procedure to be followed in the award of contracts is dependant on the subject matter of the contract.

The procedures contained in the PSC Regulations cover all public procurement contracts offered by contracting authorities. However, this excludes contracts concerning defence and security, concession contracts and utilities contracts. The procedures for the award of such contracts are set out in the DS Regulations, CC Regulations and UC regulations respectively.

**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 Procurement Regulations set out the threshold amounts in respect of contracts within those areas. These are as follows.

PSC Regulations

- £5,336,937 for public works contracts;
- £138,760 for public supply contracts and public service contracts awarded by central government authorities, and design contests organized by such authorities;



- £213,477 for public supply contracts and public service contracts awarded by sub-central contracting authorities, and design contests organized by such authorities; and
- £663,540 for public service contracts for social and other specific services contained in the PSC Regulations.

#### DS Regulations

- €5,150,000 for works contracts; and
- €412,000 for supply and service contracts.

#### CC Regulations

- £5,336,937 for works contracts.

#### UC Regulations

- £5,336,937 for works contracts;
- £426,955 for supply contracts, service contracts and design contests; and
- £884,720 for contracts for social and other specific services listed in Annex XVII to the Utilities Contracts Directive (this includes contracts for health and social related services, cultural services, educational services, religious services etc...).

The Procurement Regulations contain the specific procedures that must be followed for all procurement contracts that are above the legal thresholds. Where the value of the contract is below the threshold amount, it is the Gibraltar Government Procurement Policy that sets out the procedure.

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

Where the value of the procurement is above the relevant threshold, depending on the nature and subject matter of the contract, a notice must either be placed on the Official Journal of the European Union or on the UK e-notification service.

Where the value of the procurement contract is below the threshold, it is the usual practice for a notice to be placed on the Government website in the interest of complying with the principles of fairness and transparency.

#### **5. Are calls for tender from contracting authorities published on a single or on multiple freely accessible website(s)? If yes, please name the website(s).**

Calls for tenders are usually published by the Gibraltar Government on their website or the website of the Gibraltar Procurement Office in the interests of complying with the general obligations of fairness and transparency.

To apply for any of these, tenderers must register and apply via the supplier network portal ( the "Portal") at the following address:

- Proactis - Supplier Network ([gibraltar.gov.gi](http://gibraltar.gov.gi))



**6. Does a potential bidder that is interested in the contract need to have a specific legal form, e.g., corporation, to submit a tender?**

No, a potential bidder does not have to assume a specific legal form in order to submit a bid for a contract. Economic operators may include any legal or natural person, public entity or any group of persons or entities or both. However, where a contracting authority awards a contract, it may require the bidder to assume a specific legal form, to the extent that such a change is necessary for the satisfactory performance of the contract.

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

The DS Regulations at s.27 expressly allows for bids to be made by consortia. However the other regulations neither prohibit nor expressly provide for joint bids or bids made by consortia.

**8. 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?**

No, potential bidders do not need to have a registered office or branch office in Gibraltar and can submit tenders for the contract directly from abroad. .

**9. 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 requirement in the Procurement Regulations to specifically request additional aspects or further documentation from foreign bidders.

Moreover, the Procurement Regulations contain protections for competing bidders who fall within the scope of the Procurement Regulations that oblige contracting authorities to treat them fairly and equally irrespective of whether they are based in Gibraltar.

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

Please see the answer to Q7 above.

**11. 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?**

All tenders must either be submitted in English or with a corresponding English Translation.

All tenders must be submitted via the Portal.



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

The Procurement Regulations provide minimum time limits within which bids have to be submitted to the contracting authority.

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

If the procedure as carried out in the award of a tender is compliant with the Procurement Regulations, the usual position is that a bidder will be unable to reclaim their costs. However, depending on the subject matter of the contract, the costs incurred in preparing the bid may be recoverable if an aggrieved bidder would have had a real chance of being awarded the contract had the contracting authority not breached the provisions contained in the relevant Regulations.

**14. 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?**

Contracting authorities may impose specific criteria in economic operators as requirements for participation in the tendering process. The selection criteria may relate to:

1. Suitability to pursue a professional activity;
2. Economic and financial standing; or
3. Technical and professional ability.

However, the requirements must be limited to those that are appropriate to ensure that the candidate / bidder has the appropriate legal and financial capacities and/or the technical and professional abilities to perform the contract to be awarded. Any requirement must be related and proportionate to the subject-matter of the contract.

Depending on the subject matter of the contract and the Regulation that applies to the procurement, the contracting authority will award the contract to a bidder who either:

- has submitted the most economically advantageous offer from the point of view of the contracting authority; or
- has submitted the lowest price bid.



**15. 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?**

Yes, Gibraltar's legal system provides legal protection against the proposed award of a contract to an aggrieved bidder even before the contract has been entered into. An aggrieved bidder would have to start proceedings in the Supreme Court of Gibraltar within the time period specified in the relevant Regulation. If the aggrieved bidder is successful in his application, the Supreme Court may make an order for remedies, as outlined in s.97 of the PSC, s.54 of the CC Regulations, s.57 of the DS Regulations and s.110 of the UC Regulations.

**16. 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?**

No, if the Procurement Regulations apply to the contract, there are no conditions restricting this primary legal protection.

**17. 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 that have to be presented to a court in order to receive a damage award?**

Yes, the Procurement Regulations provide for legal protections where the court finds that a contract has been entered into following a breach of the relevant Regulation.

If the Supreme Court is satisfied that:

- a decision or action taken by the contracting authority was in breach of duty owed in accordance with s.89 and s.90 of the PSC Regulations, and
- the contract has been entered into

it may order any of the remedies contained in s.98 of the PSC Regulations.

The equivalent regulations in respect of the conditions can be found at s.102 and s.103 of the UC Regulations, s.50 of the DS Regulations and s.46 and s.47 of the CC Regulations.

The equivalent regulations in respect of the remedies can be found at s.111 of the UC Regulations, s.58 of the DS Regulations and s.55 of the CC Regulations.





## 18. Can your office

i. 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?

Yes.

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

Yes.

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

Mr. Karl Ghio

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