



Guidelines for Contracts with Public Authorities

5th Edition



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2023 Update

Public
Procurement

5th Edition

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SZECSKAY

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

Yes, the legal system in Hungary provides for specific procedures for the award of contracts. The main legal source regulating the different procurement procedures is the Act CXLIII of 2015 on Public Procurement Procedures (the "**Public Procurement Act**"), which has been legislated and adapted according to the requirements of the EU Directives for the award of contracts.

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

Yes, Hungarian law - subject to the EU regulations - distinguishes according to the type of goods/ services (the subject) that are to be procured. The possible subjects of public procurement are as follows:

- public supply contracts,
- public works contracts,
- public service contracts,
- concession for construction
- concession for services

Furthermore, the Public Procurement Act sets forth specific rules regarding special procurement procedures of entities operating in the water, energy, transport and postal services sectors.

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 purchase of specific goods and services attached to the predetermined value limits is subject to public procurement procedures as set forth in the Public Procurement Act. Different provisions apply to procurements over the value limits set by the

European Communities, the ones below the community limit and above the national limit, and to those below the national limit.

As regards the public procurement procedures over the value limits set by the European Communities, the essential thresholds currently amount to

(a) EUR 5,382,000 for construction investments / concession for construction,

(b) EUR 140,000 for supply/service contracts awarded by ministries, the Prime Minister's Office and the central purchasing entities authorized to conduct centralized procurement procedures,

(c) EUR 215,000 for all other public supply/service contracts,

(d) EUR 431,000 for public supply/service contracts in the sector field (water, energy, and transport sectors)

As regards the national limits, these are determined by the Budgetary Act of the current year.

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

The contracting authorities shall prepare a summary in the early part of each fiscal year, by March 31 at the latest, to outline all the procurements planned for the given year.

Furthermore, the contracting authorities may prepare and publish a preliminary prospectus at the beginning of each fiscal year, for the year or for the following period of maximum 12 months concerning:

(a) all public supply, service or works contracts planned for the year (other than those subject to any exemption and the value of which is not less than the community limits) with an estimated contract value of not less than the Community limits;

(b) all public service contracts for social or other specific services under Annex 3 of the Procurement Act planned for the year with an estimated contract value of not less than the Community limits.

Contracting authorities shall publish their preliminary prospectus by way of a notice. The notice may be published after it is dispatched to the Office for Official Publications of the European Communities by way of electronic means.

Furthermore, open procurement procedures must be commenced by the publication of a tender notice. In case of negotiated procurements, an invitation for participants shall be published both in community level and national level procedures.

In case of community level procurements, tender notices and invitations for participants shall be published in the Official Journal of the European Union and in TED data bank. In case of national level procurements, tender notices and invitations for participants shall be published in the official gazette of the Council of Procurements (In Hungarian "Közbeszerzési Értesítő").

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).

In case of community level procurements, tender notices and invitations for participants shall be published in the Official Journal of the European Union and in TED data bank. In case of national level procurements, tender notices and invitations for participants shall be published in the official gazette of the Council of Procurements (in Hungarian "Közbeszerzési Értesítő").

In addition to the above, contracting authorities may also publish their procurement notices on their own websites or other platforms. However, the Közbeszerzési Értesítő and the Official Journal of the European Union remain the primary and most comprehensive source for accessing tender announcements and procurement-related information in Hungary.

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?

Generally, there is no specific legal form mandated for potential bidders. A natural or legal person or unincorporated business association, and any other entity with legal capacity under the laws of its home country may submit a bid in a public procurement procedure; the Hungarian branches of foreign companies are also capable of submitting bids. However, it shall be noted that the contracting entity may require the establishment of a specific business association or an entity with legal personality if the contract is awarded to a consortium of bidders and such requirement regarding establishment is justified by the interest of fulfilling the contract. Bidders shall be notified of this clause in the tender notice. It is advisable for potential bidders to carefully review the tender documents and any additional regulations applicable to the specific procurement to determine if there are any specific legal form requirements

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

Yes, both are possible, however a bidder may not submit parallel to its individual bid a joint tender in the same public procurement procedure with another bidder, and it may not participate in that same procedure as a subcontractor proposed to be contracted for a value in excess of ten per cent of the value of the contract. Furthermore, it may not supply resources to another bidder in the same tender. It's worth noting that the tender documentation may provide specific requirements or conditions for joint offers, such as the need for a consortium agreement or the submission of certain supporting documents. Bidders should carefully review the tender documents to ensure compliance with any such requirements.

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?**

The Public Procurement Act provides that bidders established in the European Union and community goods shall be granted national treatment in public procurement procedures. National treatment to non-Community bidders and non-Community goods shall be granted in procurement procedures in harmony with the international commitments of the Republic of Hungary and the European Communities in the field of public procurements.

With respect to the above, bidders registered in one of the member states of the European Union may participate in procurement procedures under the same conditions as the Hungarian bidders. Bidders registered outside of the territory of the European Union shall be treated according to the international commitments of Hungary and the EU.

In light of the above, an entity registered in any of the member states of the EU is not required to have a registered office or branch office in Hungary and may submit a tender directly from abroad. As far as a potential bidder registered outside the territory of the EU, special rules might apply depending upon the applicable international or bilateral treaty.

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?**

Yes, it is possible for foreign bidders to submit a bid for a contract to a contracting authority directly from abroad.

As explained above, the Public Procurement Act provides that bidders established in the European Union and community goods shall be granted national treatment in public procurement procedures. National treatment to non-Community bidders and non-Community goods shall be granted in procurement procedures in harmony with the international commitments of Hungary and the European Communities in the field of public procurements.

It is important for foreign bidders to carefully review the tender documents and comply with any specific requirements or conditions stated therein. This may include providing certain supporting documents, demonstrating financial stability, and fulfilling any legal or regulatory obligations necessary for participation in the procurement process.

However, ESPD and E-certis facilitate public procurement processes by providing standardized forms and tools that aid both foreign bidders and contracting authorities in assessing qualifications, eligibility, and compliance requirements.

E-Certis is an electronic certification system used in public procurement across the European Union (EU). It aims to facilitate the verification of specific certificates or documents required during the procurement process. The system allows contracting authorities and economic operators to access and exchange information related to certificates issued by national authorities in different EU member states.

By utilizing E-Certis, contracting authorities can access relevant information about economic operators and evaluate their qualifications and compliance with specific requirements. This helps to ensure fair competition, equal treatment, and non-discriminatory access to public procurement opportunities within the EU.

In summary, E-Certis is an electronic certification system that streamlines the verification of certificates and documents required in public procurement across EU member states. It enhances transparency, efficiency, and trust in the procurement process while facilitating the exchange of information between contracting authorities and economic operators.

The European Single Procurement Document (ESPD) is a standardized form used in public procurement across the European Union (EU). It serves as a self-declaration by economic operators (bidders) to demonstrate their qualifications, capabilities, and eligibility to participate in a procurement procedure.

The ESPD simplifies the documentation process for bidders by replacing the need for submitting extensive supporting documents at the initial stage of the procurement process. Instead, bidders can complete the ESPD form, which includes relevant information about their qualifications, financial status, technical capacity, and compliance with legal obligations.

Contracting authorities can assess the ESPD forms submitted by bidders to determine their suitability for the procurement procedure. If a bidder is selected as the potential winner, they may be required to provide supporting documents as proof of the statements made in the ESPD.

Overall, the ESPD simplifies the initial stage of the procurement process by providing a standardized self-declaration form for bidders. It promotes efficiency, transparency, and equal opportunities for economic operators across the EU.

Furthermore, the written communication related to the procurement procedure between the contracting authority and bidders is conducted electronically through the Electronic Procurement System, unless otherwise specified by the Public Procurement Act or the regulations on the Electronic Procurement System.

Registration by an authorized person in the system is required to use the EPS. The registration is unified, meaning that the same natural person or legal entity can have one registration. Only economic operators registered in the EPS can be invited to participate or submit bids.

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

Yes. As explained under questions above, bidders established in the European Union and community goods shall be granted national treatment in public procurement procedures. National treatment to non-Community bidders and non-Community goods shall be granted in procurement procedures in harmony with the international commitments of Hungary and the European Communities in the field of public procurements.

With respect to the above, bidders registered in one of the member states of the European Union may participate in procurement procedures under the same conditions as Hungarian bidders. Bidders registered outside of the territory of the European Union shall be treated according to the international commitments of Hungary and the EU.

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?**

The contracting entity must publish in the tender notice, among others, the language (languages) of the tender, which is mainly Hungarian. Contracting authorities may decide to accept the use of a language other than Hungarian and indicate this in the tender notice, however, it may not be made mandatory. As mentioned above bids can be submitted by the bidder using the electronic form filled out in the Electronic Procurement System. Although the system operates in Hungarian and in English as well, the published and uploaded documents, including various notices are mainly in Hungarian.

Bidders shall prepare their tenders in accordance with the formal and content requirements defined in the tender notice and in the tender documentation using the forms provided by the EPS.

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

The tender notice shall also contain the final deadline for submission of bids. The Public Procurement Act sets forth minimum periods to be taken into account by the contracting entity during the determination of the deadline for submission. The term of the minimum periods depends on the type of the public procurement procedure. A deadline indicated in the tender notice shall commence on the day that follows the publication of the tender notice (invitation to tender).

In case of open procedures, the contracting entity may not set the time limit for the receipt of bids (final deadline for submission of bids) at less than 35 days from the date of sending the notice containing the tender notice. While in respect of restricted procedures the contracting entity may not set the final deadline for submission of tenders at less than 30 days from the date of sending the invitation to the tender. The time limit for receipt of bids may be replaced by a shorter period if the conditions defined in the Public Procurement Act are fulfilled.

In other types of public procurement procedures the final deadline for submission can be shorter. Furthermore, in the accelerated open procedure the contracting entity may not set the time limit for participation at less than fifteen days from the date of sending the notice containing the invitation to participate. While when using the accelerated restricted procedure the contracting authority may not set the final deadline for submission of tenders at less than ten days from the date of publication of the invitation to tender in restricted procedures.

In addition, please note that the time limit for receipt of bids may also be reduced if the contracting entity has drawn up and transmitted the tender notice by electronic means in accordance with the format and procedures laid down in specific other legislation.

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

Generally, bidders cannot reclaim the costs for preparing their bids. However, civil actions may be initiated in connection with any infringement involving public procurements procedures if the infringement is established by final ruling of the Public Procurement Arbitration Committee, or by the court in the course of the review of a decision of the Public Procurement Arbitration Committee.

If a bidder's claim for damages is limited to recover from the contracting entity the expenses incurred in connection with the preparation of the bid and the participation in the public procurement procedure, it is sufficient to provide proof to the extent:

(a) that the contracting entity has breached any provision of the legal regulations on public procurement procedures;

(b) that the bidder had a real chance to win the contract; and

(c) that the infringement had a direct impact on the bidder's chances for winning the contract.

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?

The Public Procurement Act defines the grounds of exclusion (e.g. the bidder shall be excluded if it is being wound up, or is under bankruptcy or liquidation proceedings, it has not fulfilled any obligation relating to the payment of taxes, customs duties or social security contributions etc.).

In addition, on the basis of the Public Procurement Act, the contracting entity may prescribe in the tender notice additional grounds of exclusion (e.g. the bidder can be excluded if it has been convicted of a misdemeanor offense concerning his economic or professional conduct by a judgment rendered within five years to date; it has been sanctioned by a final administrative or court ruling for any breach of obligation in connection with a public procurement contract within the preceding five years, etc.)

Furthermore, the contracting entity shall specify in the tender notice the personal, technical and financial conditions and the professional requirements to be fulfilled by tenderers. The conditions for participation must be prescribed in accordance with the Public Procurement Act with respect to tenderers and also their subcontractors proposed to be contracted for a value in excess of ten per cent of the value of the contract.

The contracting entity may also include a clause in the tender notice requiring tenderers other than natural persons to indicate in their tenders the name and professional qualification of the natural persons participating in the performance of the contract.

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?

In the event of any illegal conduct or infringement in public procurements or contract award procedures, review procedures may be initiated by the bidders. Subject to certain conditions, review procedures can be initiated even before the award of the contract takes place. The initiation of a review procedure will automatically extend the stand-still period during which no contract may be signed between the contracting entity and the winner of the procedure. In this case, the contract shall not be signed until the final decision of the Public Procurement Arbitration Committee (the "**Committee**").

Please be advised that a request for a pre-contractual dispute settlement shall also be requested within 5 days after the publication of the written report in order to be eligible for any further remedies. The dispute settlement may be requested by a tenderer who does not agree with any statement of the written report and shall be submitted via e-mail or facsimile to the contracting entity. The contacting entity shall respond until the 8th day following the publication of the written report. As a consequence, the contracting entity has the right to correct the written report once. It is however important to note that the request for a review procedure does not extend the deadline for other remedies.

Actions initiated thereafter in connection with any infringement involving public procurements and contract award procedures shall fall within the competence of the Committee.

A petition for review may be submitted by the contracting entity, by the bidder or any other interested party, whose right or lawful interest is violated or jeopardized by any unlawful conduct or infringement of the Public Procurement Act. The petition shall be filed within fifteen days. Where the petitioner becomes aware that a contract has been awarded for the purchase of supplies without a public procurement procedure after the above given deadline, the petition may be submitted within one year following the date of the conclusion of the contract, or if this date is not available, the date of commencement of performance of the contract by either party. Failing to comply with such deadlines shall constitute a waiver of the respective rights.

Firstly, the Committee shall check whether the petitions are in compliance with the formalities prescribed by laws. If the petition does not meet the requirements of the Public Procurement Act, the Committee may oblige the petitioner to submit additional data or documents within five days. If the petitioner fails to do so, the petition is to be refused.

Generally, the Committee concludes the proceedings within 15 days if no hearing is held, or within 30 days if a hearing takes place. Under specific circumstances, the deadline may be extended once by 10 days.

The Committee shall adopt a decision in which the Committee may reject an application if unsubstantiated; establish the fact of infringement; declare the proceeding unlawful and impose sanctions; establish the fact of infringement and to ban the bidder affected from participating in public procurement procedures for a period of six months up to three years. The Committee may file a civil suit in accordance with the general provisions on civil procedures for annulment of a contract concluded in violation of the regulations governing public procurements or contract award procedures.

The court review of the decision of the Committee may be initiated in accordance with the Public Procurement Act

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?

The form and the procedure of the legal protection and the remedies in case of the infringement of the provisions of the Public Procurement Act do not depend on such conditions in Hungary.

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?

Civil actions may be initiated in connection with any infringement involving public procurements and contract award procedures only if the infringement has been established by a final ruling of the Committee, or by court following the review of a decision of the Committee.

As indicated under question no 12 above, if a bidder's claim for damages is limited to recover from the contracting entity the expenses incurred in connection with the preparation of the bid and the participation in the award procedure, it is sufficient to provide proof to the extent:

(a) that the contracting entity has breached any provision of the legal regulations on public procurements and contract award procedures; and

(b) that the bidder had a real chance to win the contract; and

(c) that the infringement had a direct impact on his chances for winning the contract.

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?
- ii. represent foreign clients seeking primary and secondary legal protection before all public offices/courts in your country?
- iii. Please name a contact person within your office for questions of public procurement law

Yes, our office can advise on the matters as described in the question above. Our office has advised numerous clients in connection with various aspects of public procurement procedures in Hungary and has a considerable experience in regard of such procedures in Hungary.

Our specialized team provides in-depth legal services both to contracting authorities and tenderers concerning all aspects of public procurement law. Although our team provides legal advice with respect to all industries, we have particular expertise in large scale design and construction projects, the pharmaceutical sector, the utilization of non-repayable state aid and grant agreements.

The particular strength of our public procurement team lies in the versatile knowledge of its members. Our team is not only capable of advising government departments or market leading suppliers and contractors on how to conduct or participate in a tender, but is also ready to provide comprehensive advice on the contractual, tax or IP aspects of the specific public procurement tender and the contract to be concluded.

Members of our public procurement team are also distinguished participants of our top tier dispute resolution practice group. Therefore, it is safe to say that we do not shy away from representing our clientele in front of the Public Procurement Board or the Administrative Department of local courts. The members of our public procurement team are dr. Wellmann György, dr. Katalin Grósz, dr. Sándor Németh and dr. Róbert Dezső.

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