



Guidelines for Contracts with Public Authorities

5th Edition



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2023 Update

Public
Procurement

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Contributions
from the following

Legalink member firms

Prieto Abogados

Jakoby Rechtsanwaelte

Hassans

Szecskay

Dua Associates

Cocuzza

Gasser Partner

Azman Davidson & Co.

Ramos Ripoll & Schuster

Divina Law

Sérvulo & Asociados

PR Legal

Barun Law

López-Ibor Abogados

Hellström

Lindborg & Mazor LLP

Chile

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Malaysia

Mexico

Philippines

Portugal

Serbia

South Korea

Spain

Sweden

U.S.A.

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

Yes. The Public Procurement Code (in Italian, “*Codice degli Appalti Pubblici*”) has been lately renovated, with a legislative reform which became applicable starting from April 1st, 2023.

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

Generally speaking, the procedure established by the Public Procurement Code is applicable to all kinds of public contract. Notwithstanding that, the law establishes some specific rules for some sectors (e.g. main resources, like water, electricity and similar).

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?

Article 35 of the Public Procurement Code establishes several thresholds depending on the kind of goods/services demanded. As an example, the thresholds are the following: a) Euros 5,225,000 for public works contracts and concessions; b) Euros 135,000 for public supply contracts, public service contracts and public design contests awarded by central contracting authorities; c) Euros 209,000 for public supply contracts, public service contracts and public design contests awarded by sub-central contracting authorities; d) Euros 750,000 for contracts for social services and other specific services.

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

The tenders are published in the EU Official Journal or Italian Official Journal.

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).

IAs mentioned, the tenders are published in the EU Official Journal or Italian Official Journal. In addition, it is possible to find the tenders in the specific websites of the ministers.

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?

In general, the law requires compliance with requirements of morality, integrity and professional reliability. The specific tender may call for additional requirements.

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

Yes, they are. Please consider also that a bidder who does not have all prerequisites demanded by the tender offer, but has a relation with someone else who has such prerequisites can place a bid thus availing himself of the third party's owned prerequisites. This is called "avalimento".

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?

Companies based on a EU country can participate to the tender. Also companies based in non-EU countries can participate to tenders, provided that such non-EU countries are part of international conventions with Italy.

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?

No, he does not.

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

Yes, this is allowed, unless differently provided in international conventions.

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?

Specific rules can be established by the tender offer. In any case, documentation is usually presented in Italian and in written form.

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

Specific rules are established by the tender offer.

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 procurement is awarded but the public authority does not enter into the agreement, the awarded subject is entitled to be reimbursed of the documented costs he has faced. Otherwise, the costs are borne by the bidder.

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?

Specific criteria are set forth in the tender offer. The main criterion is that the tender is awarded to the bidder which offer best conditions in terms of costs. As already mentioned, the bidder has to comply to specific requirements in terms of morality, integrity and professional reliability

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?

Excluded bidders can sue the public authority before the competent regional administrative court (in Italian "T.A.R.").

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 legal protection described in the previous point is always admitted.

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?

The bidder can seek for damages, but he has the burden of proof of the suffered damage.



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

Claudio Cocuzza

Cocuzza & Associati
Via San Giovanni sul Muro, 18
20121 Milano

Telephone: +39 866096

E-mail: ccocuzza@cocuzzaeassociati.it

