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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  
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## Liechtenstein

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

In introductory terms, the legal principles of Liechtenstein's procurement law shall be briefly outlined:

The Law on Public Procurement (Gesetz über das öffentliche Auftragswesen, "ÖAWG") and the Regulation on Public Procurement (Verordnung über das öffentliche Auftragswesen, "ÖAWV") regulate the awarding of public construction, supply, and service contracts (public contracts), as well as the conduct of competitions and the awarding of construction and service concessions.

The Law on Public Procurement in the Field of Sectors (Gesetz über das Öffentliche Auftragswesen im Bereich der Sektoren, "ÖAWSG") and the corresponding Regulation on Public Procurement in the Field of Sectors (Verordnung über das Öffentliche Auftragswesen im Bereich der Sektoren "ÖAWSV") apply to the awarding of public construction, supply, and service contracts and the conduct of competitions in the fields of water, energy, transportation services, and postal services.

According to these legal sources, the following procedures are foreseen:

- *Open procedure*: any interested economic operator may submit a tender.
- *Restricted procedure*: any economic operator may request to participate but only those economic operators invited by the contracting authority may submit a tender. Participation is limited to a certain number of selected suppliers (at least five, but not more than twenty) which are invited to submit a tender.
- *Negotiated procedure*: at least three interested suppliers (if possible) are invited for negotiations of a contract. Effective competition has to be granted among the invited suppliers.
- *Competitive dialogue*: any economic operator may request to participate and the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable options capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.
- *Innovation partnership*: any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority.
- *No procedure*: construction-, supply- and service contracts may be awarded directly up to a contract value of CHF 100,000.00. Contracts must be awarded in accordance with standard market conditions.



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

Public contracts shall be awarded by open or restricted procedure, negotiated procedure, competitive dialogue or innovation partnership. If the focus is on obtaining a project or concept, planning competitions can be held. However, the choice of procedure does not depend on the type of goods to be procured but rather on the value of the goods.

Public contracts above the thresholds shall be awarded by the open or restricted procedure, depending on the appropriateness of the procedure.

If public contracts above the threshold values cannot be awarded by open or restricted procedure due to exceptional circumstances, the negotiated procedure or the competitive dialogue may be chosen. The government determines the exceptional circumstances in Article 24 of the ÖAWV. It differentiates between the choice of the negotiated procedure with or without prior publication. The negotiated procedure without prior publication may be used in specific and well-defined circumstances:

- a) When, following an open or restricted procedure, no suitable offers or applications have been received, and the original contract terms remain unchanged. Unsuitable offers are those that cannot meet the contracting authority's needs without significant modifications, or if the applicant can be excluded or does not meet qualification criteria.
- b) When the nature of the construction, supply, or service requires the involvement of a specific applicant or tenderer due to reasons such as creating unique works of art, technical limitations that eliminate competition, or the protection of exclusive rights, including intellectual property rights.
- c) In cases of extreme urgency, where unforeseen events prevent compliance with prescribed deadlines for open, non-open, or negotiation procedures. The urgency must not be attributable to the contracting authority.
- d) For new construction or services that mirror previous projects awarded to the same contractor under specified conditions, within three years of the original contract's conclusion.
- f) For supply contracts intended solely for research, experimentation, investigation, or development purposes, excluding mass production for market testing or research and development cost coverage.
- g) For additional supplies by the original contractor, either for partial renewal or expansion of existing supplies or facilities, where changing the contractor would result in technical incompatibility or disproportionate difficulties in use and maintenance. Such contracts generally should not exceed three years.
- h) In public service contracts, when competition rules dictate that the contract must be awarded to the winner or one of the competition winners. All competition winners must be invited to participate in negotiations, as stated in the competition notice.
- i) In cases involving the supply of goods listed and traded on stock exchanges.
- k) When supplies or services are acquired under favorable conditions from a supplier permanently discontinuing its commercial activity or from insolvency administrators within insolvency or similar proceedings.

The negotiated procedure with prior publication may be applied in the following cases:

- a) When, after conducting an open or restricted procedure, no proper offers have been submitted, or only offers have been submitted that are unacceptable according to Liechtenstein's conditions.
- b) In the case of construction-, supply- or service contracts where one or more of the following criteria are met:

The needs of the contracting authority cannot be met without the adaptation of existing solutions.

The contracts involve conceptual or innovative solutions.

The contract cannot be awarded without prior negotiation due to specific circumstances related to the nature, complexity, legal or financial framework, or associated risks.

The technical specifications cannot be created by the contracting authority with sufficient accuracy by reference to a standard, European technical assessment, a common technical specification, or technical references in accordance with Annex VII Paragraphs 2 to 5 of Directive 2014/24/EU.

In the case of the competitive dialogue, the provisions of the negotiated procedure with prior publication apply mutatis mutandis.

Public contracts below the thresholds are usually awarded by open or restricted procedure. The government regulates in the ÖAWV the cases in which the negotiated procedure can be chosen or direct awards are possible.

### **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 legal framework governing the award of public contracts explicitly stipulates that the applicable procedures and regulations are contingent upon the financial valuation of the goods, services, or works to be procured. This demarcation is achieved through financial thresholds (referred to as "Schwellenwerte" in the original legislative text).

The national thresholds for direct awards and the negotiated procedure are defined in Articles 25 and 26 of the ÖAWV. If these contract values for direct awards or for negotiated procedures are exceeded, the open or restricted procedure, as per Article 22 para. 5 of the ÖAWV, is generally to be applied.

Construction-, supply- and service contracts may be awarded directly up to a contract value of CHF 100,000.00. The negotiated procedure is applied for contracts with a contract value of up to CHF 151,377.00. If the contract value is above CHF 151,377.00, the open or restricted procedure, competitive dialogue or innovation partnership are to be applied.

Contracting authorities within the sectors award contracts as deemed appropriate, utilizing the open procedure, the restricted procedure, the negotiated procedure, the competitive dialogue, or within the framework of an innovation partnership, as outlined in Article 33 para. 1 ÖAWSG.

The international thresholds are defined in the publication concerning the thresholds for the award of public contracts or in the publication concerning the thresholds for the award of public contracts within the sectors. Above these thresholds, public contracts are to be awarded, as appropriate, through the open or restricted procedures.

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

In the area of national thresholds, contracts awarded through open, non-open procedures, competitive dialogue, or within an innovation partnership must be published by the contracting authority using a public announcement (advertisement) in the official Liechtenstein publication organs in German language.

In the area of international thresholds, the following types of notices are distinguished:

##### Advance Notice

- The contracting authorities must, when it comes to contracts above the thresholds, with the exception of the negotiated procedure without prior publication, announce in advance which construction-, supply- or service contracts they intend to award in the next twelve months.

##### Notice

- The intended awarding of public contracts must be published through a public announcement (advertisement) in the official Liechtenstein publication organs in the German language and it must also be directly forwarded to the Office for Official Publications of the European Union.

##### Notice of awarded contracts

- Contracting authorities must send a notification to the Office for Official Publications of the European Union within 30 days of awarding a contract.

In summary, the contracting authority is mandated to inform the market through various mechanisms, primarily centered on the issuance of notices, which are subject to specific content, format, and dissemination guidelines, as prescribed by the pertinent legal provisions.

#### 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).**

Public contract announcements, both for contracts above and below the national threshold values, are required to be published in the official Liechtenstein publication organs in the German language. Moreover, for contracts that exceed certain financial thresholds, the notices are also to be transmitted directly to the Office for Official Publications of the European Union for their potential inclusion in platforms like the Tenders Electronic Daily (TED) and the Official Journal of the European Union.

The Official Gazette is published in electronic form. The announcements in the Official Gazette are available for consultation at <https://apps.llv.li/amtsblatt/kundmachung/displayAct/0>.

**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).**

Public contract announcements, both for contracts above and below the national threshold values, are required to be published in the official Liechtenstein publication organs in the German language. Moreover, for contracts that exceed certain financial thresholds, the notices are also to be transmitted directly to the Office for Official Publications of the European Union for their potential inclusion in platforms like the Tenders Electronic Daily (TED) and the Official Journal of the European Union.

The Official Gazette is published in electronic form. The announcements in the Official Gazette are available for consultation at <https://apps.llv.li/amtsblatt/kundmachung/displayAct/0>.

**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 prospective bidder does not need to adopt a specific legal structure to submit a bid for a contract. Contracting authorities assess the suitability of applicants and bidders, with eligibility criteria primarily focusing on the applicant's or bidder's suitability, rather than the suitability of the subject matter of the contract to be performed.

Suitability is defined as economic, financial, professional, and technical capacity. Contracting authorities can establish minimum requirements that applicants and bidders must meet.

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

Yes, both are possible.

**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, a potential bidder does not need to have a registered office or branch office in Liechtenstein. The Law on Public Procurement (ÖAWG) guarantees non-discriminatory access to public procurement markets in Liechtenstein for Liechtenstein suppliers and suppliers established in a contracting party to the Agreement on Government Procurement (GPA) or other countries as far as they grant reciprocity and in accordance with applicable international obligations (i.e. GPA, EEA or special agreements between Liechtenstein and another country).

**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?**

As explained under question no. 8, the Law on Public Procurement (ÖAWG) guarantees non-discriminatory access to public procurement markets in Liechtenstein. Article 3 ÖAWG says that national and foreign suppliers are to be treated equally if, according to the international law, reciprocity is granted. Cases in which an international obligation for equal treatment exists without reciprocity shall remain reserved.

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

Yes, a multinational bidding consortium is allowed to submit a bid according to Liechtenstein law.

**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 legislation does not exclude the submission of tenders in languages other than German. It is at the discretion of the contracting authority to specify which additional languages are acceptable (refer to Article 19, para. 2, lit i of the ÖAWV). In practice, these additional languages may include English or French.

The same principle applies to formal requirements, which are also delineated within the tender documents.

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

Various minimum periods must be observed for the different phases of a procurement procedure. These deadlines are defined in Articles 27 to 29 of the Public Procurement Act and in Articles 29 to 34 of the Public Procurement Regulation. The different deadlines are outlined in more detail below.

Applications and offers are considered submitted on time if they are received at the designated submission location by 5:00 PM on the last day of the deadline specified in the notice. Applicants and bidders are obligated to submit the documents, certificates, and declarations necessary for demonstrating suitability before the expiration of the prescribed deadline for the submission of applications and offers, if these are not available electronically.

- Deadlines for procurement procedures above the threshold values

*Deadlines in open procedures:*

In open procedures, specific deadlines apply for the submission of offers, ranging from 15 to 35 days, depending on circumstances such as prior information and the dispatch of tender documents.

The contracting authority may extend the offer submission deadline by five days in certain cases, such as when tender documents cannot be made fully accessible electronically due to specific reasons or if there are confidentiality concerns.



The contracting authority may extend the offer submission deadline by five days in certain cases, such as when tender documents cannot be made fully accessible electronically due to specific reasons or if there are confidentiality concerns.

If offers can only be prepared after on-site visits or due to substantial changes in tender documents, the deadlines should be extended to ensure fairness in the bidding process.

*Deadlines in restricted procedures, negotiated procedures with prior publication of a contract notice, competitive dialogue, innovation partnership and dynamic purchasing system:*

In restricted procedures and negotiated procedures with prior publication, deadlines include 30 days for submitting applications and offers, and 10 days for offers if prior information has been provided. There are also specific deadlines related to prior information.

Sub-central public procurement entities can mutually agree with selected bidders on the offer submission deadline. If no agreement is reached, the minimum deadline is 10 days from the day of sending the invitation for offer submission. The deadline can be shortened by five days for electronic submissions.

Competitive dialogue and innovation partnerships have specific deadlines for submitting applications and for responding to additional inquiries.

In dynamic procurement systems, there are deadlines for submitting applications, but once the invitation for the first individual contract award within the system is sent, there are no further deadlines for submitting applications.

If site visits or on-site conditions are necessary for preparing offers, deadlines must be extended to allow all bidders access to necessary information. The extension should be proportionate to the importance of the information or changes. Contracting authorities can extend deadlines in certain circumstances.

*Accelerated procedure:*

In cases where the specified deadlines cannot be met, minimum allowable timeframes are permissible according to Article 32 of the regulation (ÖAWV). Additionally, it addresses circumstances in which deadlines can be extended, such as when essential documents or information are not provided on time or when significant changes are made to tender documents.

- Deadlines for procurement procedures below the threshold values

*Open Procedure:*

In the open procedure, there is a minimum requirement of 17 days from the date of publishing the procurement notice until the submission deadline for offers. This period allows potential bidders sufficient time to prepare and submit their offers.

### *Restricted Procedure:*

For the restricted procedure, a similar 17-day minimum period applies, but it begins from the publication of the invitation to submit applications. Selected applicants from the initial application phase are then granted 17 days to submit their detailed offers. This two-step approach helps streamline the evaluation process.

### *Negotiation, Competitive Dialogue, and Innovation Partnership:*

These more complex procurement methods also mandate a minimum 17-day deadline for invited participants to submit their offers. These methods often involve negotiations or discussions, and the extended timeframe reflects the need for thorough deliberation.

It is important to note that these deadlines can be shortened in exceptional cases, but this must be justified by compelling special circumstances. Importantly, any such adjustment should not result in discrimination among potential bidders.

In situations where on-site visits or inspections are necessary for preparing applications or offers, the deadlines mentioned above should be extended accordingly. This ensures that all potential bidders have access to essential information, even if it requires additional time.

These deadlines are established to balance the interests of both procuring authorities and bidders, aiming to create a fair and competitive environment. Compliance with these timeframes is crucial to maintaining the integrity of the procurement process while allowing flexibility when necessary.

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

No, bidders cannot be reimbursed for the cost of preparing their bid.

## **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?**

Award criteria usually refer to the subject matter of the contract and not to the characteristics of the bidder or offeror. Therefore, award criteria are not knockout criteria, as in the case of eligibility criteria, but rather criteria that can be fulfilled to varying degrees, leading to correspondingly different evaluations of individual offers. The contract is awarded to the economically most advantageous offer. The economically most advantageous offer is determined based on the price or costs using a cost-effectiveness approach, such as life-cycle costing, and may include the best price-quality ratio. The best price-quality ratio is determined, in particular, based on the following criteria related to the subject matter of the contract, including qualitative, environmental, and/or social aspects:

- Quality, including technical value, aesthetics, practicality, accessibility, design for all, social, environmental, and innovative features, as well as trade-related conditions.
- The organization, qualifications, and experience of the personnel responsible for the execution of the contract, if the quality of the personnel deployed can significantly impact the level of contract performance.
- Customer service and technical assistance, delivery conditions such as delivery date, delivery methods, as well as delivery or execution time.

The list of award criteria provided above is not exhaustive. Additional award criteria may be defined as long as they adhere to principles such as non-discrimination and equal treatment.

The contracting authority specifies in the notice, tender documents, or - in the case of competitive dialogue - in the description how it weights the individual criteria to determine the economically most advantageous offer. The weighting of the award criteria may be indicated by means of a margin, the widest range of which must be reasonable. If, in the opinion of the contracting authority, the weighting cannot be specified for understandable reasons, the criteria are listed in descending order of importance. The order of the award criteria in the tender documents corresponds to the weighting of each criterion, meaning that the criterion mentioned first carries the highest weight. To ensure transparency and equal treatment of all applicants or tenderers, the weighting of the award criteria must be indicated in the tender documents. Furthermore, disclosing the weighting of the award criteria in the tender documents can be advantageous in the context of a complaint procedure.

**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?**

The contracting authority prepares an award notice regarding the outcome of the contract award, including awards made within the scope of a dynamic purchasing system or a framework agreement. The award notice is provided to all tenderers. Furthermore, except in the case of direct awards, the award notice is published in the official publication channels. Upon request, the award notice, with additional information from the EFTA Surveillance Authority, is provided.

Within 10 days after receiving the award notice, tenderers who were not selected may apply in writing to the contracting authority for an award order.

Objections to award orders made by contracting authorities, subject to government approval, transmitted electronically or by fax, can be filed within ten days, while objections to orders transmitted by postal mail can be filed within 14 days from the date of receipt, with the Administrative Complaints Commission (Beschwerdekommission für Verwaltungsangelegenheiten - VBK).

Objections to decisions or orders from the government and decisions from the Administrative Complaints Commission transmitted electronically or by fax can be filed within ten days, while objections to decisions transmitted by postal mail can be filed within 14 days from the date of receipt with the Administrative Court. Objections do not have a suspensive effect.

**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?**

Regarding decisions or orders concerning contracts with a contract value of up to CHF 200,000 (excluding value-added tax), no objections are possible, as per section 53 para. 3 of the Law on Public Procurement or section 68 para. 3 of the Law on Public Procurement in the Field of Sectors, unless it is a contract above the threshold values, in which case the provisions above the threshold values apply.

In the case of a construction contract above the EEA/WTO thresholds, an appeal is also possible below an award sum of CHF 200,000, unless an exception clause pursuant to section 9 para. 3 and 4 ÖAWG or section 24 para. 3 and 4 of the Law on Public Procurement in the Field of Sectors is involved.

**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?**

Tenderers have a legal claim to compensation for damages caused to them by contracting authorities as a result of decisions or orders that have been found to be unlawful. The claim for damages includes the expenses incurred by the tenderer in connection with the award and appeal procedure.

**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**

We are capable of assisting and advising clients on all matters and projects related to public procurement law. Please contact Thomas Nigg (Senior Partner) or Domenik Vogt (Counsel) at:

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