



Guidelines for Contracts with Public Authorities

5th Edition



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2023 Update

Public
Procurement

5th Edition

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

At the time of publishing, there is no legislation prescribing specific procedures for the award of contracts by procuring agencies.

However, Government requirements on public procurement can be found mainly in instruments issued by the Ministry of Finance i.e. Treasury Instructions and Treasury Circulars which cover matters including public procurement.

Aside from that, also relevant to Government contracts, would be:

1. the Financial Procedure Act 1957 covering, inter alia, the utilisation of public funds; and
2. the Government Contracts Act 1949 which empowers Ministers and duly authorised officers to enter into contracts on behalf of the Government, and the Governments of the States.

For Projects which are procured on a public private partnership ("PPP") basis, the prevailing guidelines issued by the Public Private Partnership Unit of the Prime Minister's Department provide guidance on the principles and objectives of PPP procurement (www.ukas.gov.my)

Changes to the public procurement process is currently anticipated with the Government considering 2 pieces of legislation i.e. the Fiscal Responsibility Act and the Government Procurement Act, to improve the public procurement process and ensure value for money in government procurements. The Acts are anticipated to be passed by the end of 2023.

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

Procurement is generally divided into the following categories:

1. Works: includes construction, engineering and infrastructure projects
2. Supplies: includes supply of raw materials (including construction materials), goods, food products, equipment etc.
3. Services: includes engagement of manpower, consultants etc.

Different monetary thresholds for each category allow for different procurement methods, as set out in (3) below.

Nevertheless, given that there is no specific legislation prescribing procedures for awards, the procurement procedures are generally established by the respective procuring agencies, and in compliance with relevant Treasury Instructions and Circulars.



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 following different procurement strategies are permitted, based on monetary thresholds:

i. Direct Purchase

This procurement method is permitted for supplies and services not exceeding RM 50,000.00, and for works not exceeding RM 20,000.00.

ii. Quotations

This procurement method of calling for quotations is permitted for procurement of supplies and services from RM50,000.00 to RM500,000.00 and for works from RM20,000 to RM500,000.00

iii. Tenders

All supplies, services and works above RM500,000.00 are procured through the tender process.

Some tenders are reserved for Bumiputra registered contractors and some permit a price preference in favour of Bumiputra registered contractors.

Any company wishing to bid for a contract with a Government agency must comply with registration requirements referred to in (5) below.

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

Tenders are published on the MOF procurement portal <http://myprocurement.treasury.gov.my> and with respect to works, are published at the Construction Industry Development Board's (CIDB) website <http://eiklan.cidb.gov.my/tender>.

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).

Please refer to (4) above.



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?

Yes. In order to submit a tender, a potential bidder needs to comply with registration requirements, which contemplate local incorporation i.e.:

i. To submit a bid for Government supplies and services, a supplier or service provider must be locally incorporated and register with the Ministry of Finance (unless the procurement is for a sum less than RM20,000.00).

ii. As of 1st February 2023, registration requirements for foreign contractors have been streamlined by the Construction Industry Development Board Malaysia

(CIDB) to be more in line with that of local contractors. All foreign contractors now need to be locally incorporated and registered with CIDB and with the Pusat Khidmat Kontraktor (PKK) (Contractors Service Centre) to be able to submit a tender for a Government project.

Contractors from CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) member countries will be entitled to an SPKKA certificate (Foreign Contractor Government Employment Certificate) unlike contractors from other non-member countries. These changes by CIDB to the registration requirements are recent to the time of publication and more clarification and fine tuning of these revisions are anticipated.

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

There is no legal prohibition against submitting joint offers. However, whether it is permitted for a specific tender would depend on the terms prescribed by the procuring agency in the request for tender and compliance with (5) above.

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?

Please refer to (5) above.

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?

Please refer to (5) above.



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

Provided that it is not a domestic tender and is open to international contractors, whether a multinational consortium bid is permitted for a specific tender and the conditions based on which it is permitted to do so would depend on the terms of the request for tender prescribed by the procuring agency.

The bidding consortium must comply with the registration requirements referred to in (5).

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?

This would have to be in accordance with the terms prescribed by the procuring agency in the request for tender.

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

Whilst generally, bidders are given a submission period of not less than 21 days for local tenders and not be less than 56 days for international tenders, the exact submission period would be as stated in the request for tender.

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, this is not permitted unless it is specifically stated in the request for tender.

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?

Bidders would have to comply with the criteria stated in the request for tender by the procuring agency. There is at present, no legislative selection criteria set by law that bidders have to comply with in addition to that.

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?

There is no legislation providing primary legal protection.

A failed bidder may complain to a procuring agency, which may cancel a tender if it finds any irregularities. An aggrieved bidder may also complain to the Public Complaints Bureau or the Public Accounts Committee. In the event of alleged bid rigging or corruption, complaints can be made to the Malaysian Competition Commission and the Malaysian Anti Corruption Commission.



- 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?**

Please refer to (15) above.

- 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?**

This is not a common claim in Malaysia.

- 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?

This is not a common claim in Malaysia.

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

If there is a case, yes.

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

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