



**COUNTRY
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Cyprus

PUBLIC PROCUREMENT

Contributing firm

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This country-specific Q&A provides an overview of public procurement laws and regulations applicable in Cyprus.

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CYPRUS

PUBLIC PROCUREMENT



1. Please summarise briefly any relationship between the public procurement / government contracting laws in your jurisdiction and those of any supra-national body (such as WTO GPA, EU, UNCITRAL)

As an EU Member State, Cyprus' public procurement legislation is governed by the relevant European legislation and case law. EU is a member of the WTO's Government Procurement Agreement (GPA) and therefore Cyprus must also comply with the GPA's provisions.

Furthermore, Cyprus is a member of the Model Law on Public Procurement introduced by the UNCITRAL that provides guidance to the national legislature.

2. What types of public procurement / government contracts are regulated in your jurisdiction and what procurement regimes apply to these types of procurements?

According to the main legislation, the types of public procurement contracts that are regulated are as follows:

- Open tender procedure;
- Closed tender procedure, whereby any economic operator may submit an application for participation;
- Competitive process with negotiations;
- Competitive dialogue;
- Innovation Partnership;
- in special circumstances, contracting authorities may award public contracts using the negotiated procedure, without prior publication.

The relevant public procurement legislation that applies in Cyprus includes the following:

- Law 73(I)/2016 which regulates the public

procurement procedures.

- Law 104(I)/2010 which regulates the procedures before the Tenders Review Authority (**TRA**).
- Law 140(I)/2016 which regulates the procurement procedures of institutions acting in the sectors of water, energy, transport and postal services and on related issues.
- Law 11(I)/2017 on the Regulation of the Concession Award Procedures and Related Issues.
- Law 173(I)/2011 for the coordination of the procedures for concluding contracts of projects, procurements and provision of services concluded by contracting authorities in the fields of defense and security and related issues.
- Regulation No 1370/2007 on public passenger transport services by rail and by road.

3. Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction?

Law 73(I)/2016 provides different thresholds depending on the nature of procurement, (namely for public works contracts, services or supplies/goods and for social and other special services) and the sector (public sector, other non-central contracting authorities, sectors of water, energy, transport and postal services and military services.

The current thresholds are as follows:

	Supplies/Goods	Services	Works
Under Law 73(I)/2016- for central public sector	€140.000	€140.000	€5.382.000
Under Law 73(I)/2016- for non- central public sector	€215.000	€215.000	€5.382.000
Under Law 140(I)/2016	€431.000	€431.000	€5.382.000
Under Law 11(I)/2017	/	€5.382.000	€5.382.000
Under Law 173(I)/2011	€431.000	€431.000	€5.382.000

For social and other special services under Law 73(I)/2016 the threshold is €750.000 and under law 140(I)/2016 is €1.000.000.

4. Are procurement procedures below the value of the financial thresholds specified above subject to any regulation in your jurisdiction? If so, please summarise the position.

Procurement procedures below the value of the financial thresholds specified above are regulated as summary procedures depending on the amount of the contract, i.e. (i) directly, (ii) by requesting tenders from a limited number of economic operators at the contracting authority's discretion, or (iii) by awarding the contract without publication of a contract notice.

5. For the procurement of complex contracts*, how are contracts publicised? What publication, journal or other method of publicity is used for these purposes?

The contracts for the procurement of complex contracts are published in e-procurement's website, an electronic contracting system. When the tender is announced, the system automatically sends the tender notice to the Official Journal of the European Union or/and the Official Journal of the Republic of Cyprus, depending on the occasion.

The minimum period from the publication of the advert for a complex contract is 30 days from the date of sending the invitation.

6. For the procurement of complex contracts, where there is an initial selection stage before invitation to tender documents are issued, what are typical grounds for the selection of bidders?

Any economic operator can apply for participation in the competitive process or dialogue, following a contract notice. In the competitive process, the contracting authority (CA) shall include all the information and the procedure to be followed in the tender documents (notice). In the competitive dialogue procedure, CA shall publish a notice requesting information for the quality selection of the participants. CA can select suitable candidates based on the following conditions:

- a. minimum of 3 candidates. If the number of candidates who meet the criteria is less than the minimum number, then CA may continue the process and invite only the suitable candidates;
- b. the award criterion shall be the best value for

money, using a cost-effectiveness approach; and

- c. CA's needs, requirements and the award criteria shall be stated in the contract notice.

Laws 140(I)/2016 and 173(I)/2011 include similar provisions as the above.

7. Does your jurisdiction mandate that certain bidders are excluded from tendering procedures (e.g. those with convictions for bribery)? If so what are those grounds of mandatory exclusion?

The law provides that CA excludes any bidder from participating in a tender procedure when any of the following apply:

- a. there is a final conviction against the bidder for participation in a criminal organization, corruption, fraud, terrorist offenses or crimes related to terrorist activities, money laundering or terrorist financing, or child labor and other forms of human trafficking; or
- b. it is known that the bidder has defaulted on its payment of taxes or social security contributions.

The law also provides that CA may exclude any bidder from participating in a tender procedure when the bidder:

- a. has defaulted on its obligations to pay taxes or social security contributions;
- b. has not complied with all applicable obligations in the fields of environmental, social and labor law established by EU law, the Cypriot legislation, collective agreements or international provisions of environmental, social and labor law;
- c. is in bankruptcy, or has been subjected to a liquidation, or is under compulsory management, or has been subjected to a bankruptcy settlement, or has suspended its business activities;
- d. has committed a serious professional misconduct;
- e. has entered into agreements with other bidders with a view to distorting competition;
- f. has a conflict of interest that cannot be remedied;
- g. has distorted competition from prior involvement of bidders in the preparation of the contract award procedure that cannot be remedied;

- h. has shown a serious or recurring defect in the execution of a substantial requirement under a previous public tender, a previous contract with a contracting entity or a previous concession contract, resulting in early termination, damages etc;
- i. has been found guilty of serious misrepresentation in providing the information required or has concealed such information or is unable to provide the required supporting documents; or
- j. has attempted to unlawfully influence the decision-making process of the contracting authority, to obtain confidential information which may provide unfair advantage in the contracting process, or to negligently provide misleading information.

8. Please describe a typical procurement procedure for a complex contract. Please summarise the rules that are applicable in such procedures.

The procedure is as follows:

- a. CAs prepare the contract documents and specify the criteria for the award of the contract.
- b. The minimum deadline for receipt of applications is 30 days from the date of dispatch of the contract notice.
- c. CAs choose the suitable candidates to and then proceeds to negotiate with the tenderer's initial and subsequently submitted tenders, with the exception of their final tender.
- d. When CA intends to complete the negotiations, it informs the other tenderers and sets a common deadline for the final submission. After CA verifies that the final tenders meet the minimum requirements, it evaluates the final tenders, based on the award criteria and awards the contract.

The length of the above procedures might take up to a few months, but it depends on the CA and the complexity of the contract.

9. If different from the approach for a complex contract, please describe how a relatively low value contract would be procured?

There is no differentiation for complex contracts of

relatively low value contract, if the amount is above the threshold.

10. What is seen as current best practice in terms of the processes to be adopted over and above ensuring compliance with the relevant regime, taking into account the nature of the procurement concerned?

The Treasury of the Republic, the national authority for public procurement, has issued a 'best practice guide' as well as 'model tender documents' that include sample agreements that, if followed, ensure the compliance with the relevant regime. Also, although not required by law, drafts are sent to the Treasury for guidance and shared with the Auditor General for any further comments.

11. Please explain any rules which are specifically applicable to the evaluation of bids.

Apart from any reasons for exclusion as mentioned in question 7 above, CAs award the public tender contracts based on the most economically advantageous tender. This means that the bidder with the lowest offer might still be excluded if there is a technical evaluation with a ranking score and, as a result, the contract will be awarded to the bidder with the highest ranking score even if he/she does not have the lowest offer from a financial perspective.

In case that bids appear to be abnormally low in relation to projects, supplies or services, CAs might require economic operators to explain the price or cost and if adequate justification is provided, they might also be excluded.

12. Please describe any rights that unsuccessful bidders have that enable them to receive the reasons for their score and (where applicable in your jurisdiction) the reasons for the score of the winning bidder.

CAs must inform all bidders of their decision to award a contract, as soon as possible. At the request of the bidders concerned, CAs must notify, as soon as possible and within 15 days, to any:

- a. rejected bidders, the reasons for the rejection of their tender.
- b. bidders who have submitted an acceptable

tender, the characteristics and relevant advantages of the selected tender, as well as the name of the contractor or the parties of the tender agreement. The provision of information is subject to confidentiality clauses as well as any business secrets, in which cases the bidders will not receive a full description, but rather a summary of the acceptable tender.

13. What remedies are available to unsuccessful bidders in your jurisdiction?

A bidder has the right to appeal against a CA's act or decision, prior to the conclusion of the contract, either to the Administrative Court of Cyprus or to the TRA. If Court or TRA decides in its favour, then they may also receive damages.

An awarded contract may be terminated by the TRA on the following conditions only:

- it has been awarded without prior publication of a contract notice in the Official Journal of the EU or in the Official Journal of the Republic of Cyprus, without this being permitted,
- the procedure has been concluded while an application was pending before the TRA, or if it has been concluded while interim measures are in force suspending the award or signing of the contract, or if it has been concluded in violation of applicable deadlines, or if has been concluded without and/or before notifying the tenderers or candidates concerned.

14. Are public procurement law challenges common in your jurisdiction?

It is common to challenge a decision in a tender procedure, specially if there is an award of significance value. By law, public bodies are not allowed to take into account any challenges made by bidders in any future procurement competitions.

The procurement claim cost depends on where the application is made, as described below. Legal fees depend on the chosen law firm and the complexity of each case.

A. Application to the TRA

The fees for a tender before TRA are determined based on the amount of the awarded bid, as follows:

From	To	Fees
€1	€1.000.000	€ 4.000
€ 1.000.001	€3.000.000	€ 6.000
€ 3.000.001	€6.000.000	€ 8.000
€ 6.000.001	€10.000.000	€ 10.000
€ 10.000.001	€50.000.000	€ 15.000
€ 50.000.001	€100.000.000	€ 17.500
€100.000.001	€200.000.000	€19.000
€200.000.001	And above	€20.000

If the application concerns any decision (i) regarding the tender documentation or (ii) to cancel a tender or (iii) that does not lead to the award of a tender, or (iv) leads to an award of the tender without a specified monetary consideration, the fees paid are set at €5.000.

B. Application to the Administrative Court:

The fees are set at €138,42.

15. Typically, assuming a dispute concerns a complex contract, how long would it take for a procurement dispute to be resolved in your jurisdiction (assuming neither party is willing to settle its case).

Before the tender is awarded and the contract is signed, a bidder may file an application/recourse before the Administrative court or the TRA. The average time between filing the application and the issuance of the judgement before the Administrative court is approximately 2 years, while before the TRA is between 2 months and 1 year.

Key stages before Administrative Court

- Submission of the resource
- Submission of the objection within 30 days
- Filing of applicant's written submissions within 4-6 weeks and afterwards defendant's within 4-6 weeks
- Filing of a applicant's reply within 2- 4 weeks
- Set the case for clarifications, whereby the defendant submits the administrative file
- The court issues a decision.

TRA

- Submission of the resource
- Submission of the report of events by CA within 30 days
- Filing of applicant's written submissions within 4 weeks and 4 weeks afterwards the defendant's
- Filing of a applicant's reply within 2 weeks

- e. A court date is set for clarifications
- f. TRA makes a decision

16. What rights/remedies are given to bidders that are based outside your jurisdiction?

Bidders based outside our jurisdiction are given the same rights and remedies as the bidders based in our jurisdiction. It is noted that in some tenders there might be eligibility criteria for bidders from countries participating in GPA, or that have signed and ratified association agreements or bilateral agreements with EU, for the field of public procurement.

17. Where an overseas-based bidder has a subsidiary in your territory, what are the applicable rules which determine whether a bid from that bidder would be given guaranteed access to bid for the contract?

Overseas-based bidders with subsidiaries in Cyprus are given the same rights and remedies as nationally owned companies within our jurisdiction. A bidder (i.e. a small company) may also take advantage of other entities' (i.e. a parent company) experience when submitting an offer to cumulatively meet the tender requirements.

18. In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues?

Even though it is not a court, there is a responsible authority in Cyprus called the Tenders Review Authority (TRA), which is the public procurement review body of Cyprus. However, it does not have exclusive jurisdiction over public procurement claims, as a bidder can choose to file a claim before TRA or Administrative Court.

TRA has jurisdiction over a public procurement claim related to the below laws: (and based on the relevant clauses on estimated value):

- a. Law 11(I)/2017,
- b. Law 140(I)/2016,
- c. Law 73(I)/2016,
- d. public works contracts that fall under the summary procedure of Law 73(I)/2016, Law 140(I)/2016, works and service concession contracts of Law 11(I)/2017 that exceed the amount of €500.000
- e. Law 173(I)/2011,
- f. contracts which fall within any other

- harmonizing legislation in force in Cyprus and concerning the procedures for the award and performance of contracts; and
- g. referrals submitted by the Competent Public Procurement Authority;

19. Are post-award contract amendments/variations to publically procured, regulation contracts subject to regulation in your jurisdiction?

Tender contracts may be amended without a new procurement procedure in the following circumstances when:

- a. the modifications are explicitly provided for in the original contract documents.
- b. additional works, services or supplies from the tenderer have been deemed necessary originally awarded the contract, which and not included in the original contract, when the change of tenderer (i) cannot be made for financial or technical reasons, (ii) would involve a significant disruption or substantial overlap of costs for CA. It is understood that any price increase does not exceed 50% of the value of the original contract.
- c. the following cumulative conditions are met: (i) the need for modification arose due to circumstances which could not have been foreseen by a diligent CA, (ii) the amendment does not change the overall nature of the contract, (iii) any price increase does not exceed 50% of the value of the original contract.
- d. a new tenderer replaces the tenderer to whom the contract was originally awarded, as a consequence of: (i) an express review or optional clause in accordance with paragraph (a) above, or (ii) a partial or total succession of the tenderer originally awarded the contract, following a corporate restructuring by another economic operator who meets the quality selection criteria initially established, provided the succession does not imply other substantial amendments to the contract and is not intended to avoid the application of law, or (iii) when the contracting authority itself assumes the obligations of the contractor to whom the public contract has been awarded to its subcontractors, in accordance with Article 71 of the Law 73(I)/2016.

20. How common are direct awards for complex contracts (contract awards without any prior publication or competition)?

Direct awards for complex contracts are not that common, although there is a recent report of the Auditor General claiming that the Department of Information Technology Services might be using more frequently lately that option.

A CA might proceed with negotiated procedure without prior publication in one of the following cases:

- a. where no tenders or no suitable tenders to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered.
- b. where the works, supplies or services can be supplied only by a particular economic operator because:
 - a. the aim is the creation or acquisition of a unique work of art or artistic performance;
 - b. competition is absent for technical reasons;
 - c. the protection of exclusive rights;
- c. for reasons of extreme urgency brought about by events unforeseeable, the time limits for the other procedure cannot be complied with.
- d. the products involved are manufactured purely for the purpose of research, experimentation, study or development (without including quantity production);
- e. for additional deliveries by the original supplier which are intended either as a partial

- replacement or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- f. for supplies quoted and purchased on a commodity market;
- g. for the purchase of supplies or services on particularly advantageous terms, (i.e. from liquidator in an insolvency procedure).

Regarding the grounds on which the decision might be challenged, see question 15.

21. Have your public procurement rules been sufficiently flexible to allow contracting authorities to respond to the ongoing COVID-19 pandemic? What measures have been most used and in what areas have any difficulties arisen? How have these evolved over the past year and is it likely that lessons learned from procurement during this period will give rise to longer term changes?

The operation of e-procurement, i.e. an electronic platform for the submission of the tenders, prevented any significant problems to arise during the pandemic. The only problems that arose were in circumstances where the evaluation of the bids had to be made with the physical presence of all involved parties, however it was resolved through the use of teleconference with relevant amendments.

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