



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **Cyprus**

### **PUBLIC PROCUREMENT**

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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



\*"Complex contracts" refers to contracts including: where the needs of the contracting authority cannot be met without adaptation of readily available solutions; contracts involving design or innovative solutions; where prior negotiation is required before a contract can be awarded due to particular circumstances related to the nature, the complexity or the legal or financial make-up of a contract or because of risks attaching to these circumstances; and where technical specifications cannot be determined with sufficient precision with reference to established technical standards, references or specifications.

### 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).

Since Cyprus' accession to the EU in 2004, the public procurement legislation of Cyprus is based on EU legislation and caselaw. In this regard, Cyprus has complied with all relevant EU public procurement directives and has enacted legislation implementing such directives. Additionally, Cyprus is a member of the WTO and is bound by the Agreement on Government Procurement (GPA).

### 2. What types of public procurement / government contracts are regulated in your jurisdiction and what procurement regimes apply to these types of procurements? In addition to any central government procurement regime please address the following: regulated utilities procurement regime (e.g. water, gas, electricity, coal, oil, postal services, telecoms, ports, airports), military procurements, non-central government (local, state or prefectures) and any other relevant regime. Please provide the titles of the statutes/regulations that regulate such procurements.

All public procurement/government contracts are

regulated in Cyprus, including supply and service contracts, works contracts and concessions. Special regulations apply to contracts awarded in the water, energy, transport and postal services sectors as well as in the defence and security sectors.

The main legislation regulating public procurement contracts is Law 73(I)/2016 on the regulation of public procurement procedures and related matters ("**Law 73(I)/2016**") which is based on Directive 2014/24/EU. In addition, the following regulations and statutes apply:

- i) Regulation (EC) No. 1370/2007 on public passenger transport services by rail and by road;
- ii) Law 173(I)/2011 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security related matters ("**Law 173(I)/2011**"), which is based on Directive 2009/81/EU;
- iii) Law 140(I)/2016 on the regulation of procurement by entities operating in the water, energy, transport and postal services sectors and related matters ("**Law 140/2016**"), which is based on Directive 2014/25/EU;
- iv) Law 11(I)/2017 on the regulation of the procedures of concession award contracts and related matters ("**Law 11(I)/2017**"), which is based on Directive 2014/23/EU;

As regards the limited number of public procurement/government contracts which do not fall within the scope of application of the above statutes and regulations, the general rules and principles of Cypriot administrative law apply.

**3. Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction? Does the financial threshold differ depending on the nature of procurement (i.e. for goods, works or services) and/or the sector (public, utilities, military)? Please provide all relevant current thresholds in your jurisdiction. Please also explain briefly any rules on the valuation of a contract opportunity.**

According to the Cypriot legislation on public procurement, there are different financial thresholds for each tender process, depending on the nature of the procurement. The financial thresholds according to the relevant regulations of the European Commission dated 15<sup>th</sup> November 2023 are as follows:

Law 173(I)/2011 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security related matters

|  | SUPPLIES | SERVICES | WORKS      |
|--|----------|----------|------------|
| Contracting authorities and entities entering into contracts in the fields of defence and security | €443.000 | €443.000 | €5.538.000 |

Law 73(I)/2016 on the regulation of public procurement procedures and related matters

|   | SUPPLIES              | SERVICES              | WORKS      |
|---|-----------------------|-----------------------|------------|
| Public Sector: (central government authorities, ministries, independent offices and services)                       | €221.000 <sup>1</sup> | €221.000 <sup>2</sup> | €5.538.000 |
| Wider Public Sector: (non-central government authorities, organisations of the public domain and local authorities) | €221.000              | €221.000              | €5.538.000 |

Law 140(I)/2016 on the regulation of procurement by entities operating in the water, energy, transport and postal services sectors and related matters

|   | SUPPLIES | SERVICES              | WORKS      |
|---|----------|-----------------------|------------|
| Contracting authorities and entities of the public and wider public sector, operating in the utility fields | €443.000 | €443.000 <sup>3</sup> | €5.538.000 |

Law 11(I)/2017 on the regulation of the procedures of concession award contracts and related matters

|   |            |
|---|------------|
| Contracting authorities and entities entering into concession contracts of works and services | €5.538.000 |
|---|------------|

According to the relevant European Directives in the field of public contracts (Directive 2009/81/EU, Directive 2014/23/EU, Directive 2014/24/EU and Directive 2014/25/EU), the thresholds are reviewed and revised by the European Commission according to its regulations every two years and the new thresholds are communicated to the contracting authorities/entities by the Relevant Authority of Public Contracts, according to the relevant harmonizing public procurement legislation. The above thresholds do not include V.A.T.

There are no rules which specifically address the issue of how a contract opportunity should be evaluated.

**Footnotes:**

<sup>1</sup> For public contracts of supplies not covered by Appendix III of Law 73(I)/2016 which are entered into by central governmental authorities operating in the field of military, the EU threshold is €143.000.

<sup>2</sup> For public contracts of social and other special services included in Appendix XIV of Law 73(I)/2016, the EU threshold is €750.000.

<sup>3</sup> For contracts of social and other special services included in Appendix XVII of Law 140(I)/2016, the EU threshold 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 above financial thresholds are considered as “summary procedures”, depending on the value of the contract and are treated as follows:

a) For contracts for supplies and works whose value does not exceed €2.000, and for services whose value does not exceed €5.000 direct award is allowed;

b) For contracts for supplies and works whose value does not exceed €15.000, and contracts for services whose value does not exceed €25.000 the contracting authorities may invite only a restricted number of economic operators to bid with oral or written tenders;

c) For contracts for supplies and works up whose value does not exceed €50.000 and contracts for services whose value does not exceed €80.000 the contracting authority may award the contract without publication of a contract notice provided that it invites at least four tenderers and gives reason for its decision.

**5. For the procurement of complex contracts\*, how are contracts publicised? What publication, journal or other method of publicity is used for these purposes? What is the typical period from the publication of the advert that bidders have to respond to the advert for a complex contract?**

For the procurement of complex contracts, such contracts are published in the website Treasury of the Republic of Cyprus, <https://www.eprocurement.gov.cy>, an electronic contracting platform.

Once a tender is announced the electronic platform automatically communicates the tender notice to the Official Journal of the European Union and/or the Official Journal of the Republic of Cyprus, depending on the occasion. The publication of a tender to the local press is optional and it's certainly prohibited for a tender to be firstly announced in the local press and then to the Official Journals.

According to Law 73(I)/2016, the period from the publication of the tender that bidders have to respond to for all contracts, including complex contracts, varies depending on the tender procedure. Specifically:

i) for an open tender procedure (s.24 of Law 73(I)/2016), the minimum period for submitting a tender is 35 days;

ii) for a closed procedure (s. 25 of Law 73(I)/2016), the minimum period for submitting a tender is 30 days;

iii) for competitive processes with negotiation (s.26 of Law 73(I)/2016), the minimum period for submitting a tender is 30 days;

iv) for competitive dialogues (s.27 of Law 73(I)/2016) the minimum period for submitting a tender is 30 days;

v) for innovative partnerships (s.28 of Law 73(I)/2016) the minimum period for submitting a tender is 30 days.

Shorter time periods may be permitted only in cases where a preliminary contract notice has been published for a minimum period of 35 days or in situations of genuine emergency.

**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? If there are differences in methodology between different regulated sectors (for example between how a utility might undertake a regulated procurement procedure and how a government department might do so), please summarise those differences.**

The typical grounds for the selection of bidders at the initial stage of the tender procedure are:

(i) the suitability of the bidders to pursue the professional activity related to the contract (e.g. membership of professional bodies, license to carry out the activities in question where such license is required etc.)

(ii) the technical and professional ability of the bidders and especially the quality and experience of their personnel in the performance of other complex contracts of the same nature and scale as the contract which is the subject of the procurement procedure;

(iii) the economic and financial standing of the bidders (i.e. their annual turnover/profitability as an indicator of their reliability and ability to perform the contract.

**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? Are there any notable features of how this operates in your jurisdiction e.g. central registers of excluded suppliers? Does your**

### jurisdiction specify discretionary grounds of exclusion? If so, what are those grounds of discretionary exclusion?

Pursuant to s. 57 of Law 73(I)/2016, the contracting authorities **must exclude** an economic operator from a tendering procedure where:

- i) they establish that there is a final conviction against it, for participation in a criminal organisation, corruption, fraud, terrorist offences or offences linked to terrorist activities, money laundering or financing of terrorism, child labour and other forms of human trafficking **or**
- ii) they are aware that the economic operator in question is in default of payment of taxes or social security contributions.

Moreover, contracting authorities **may exclude** an economic operator from a tendering procedure where such economic operator:

- i) has defaulted on its obligations to pay taxes or social security contributions;
- ii) has not complied with all applicable obligations in the fields of environmental, social and labour law established by EU law, the Cypriot legislation, collective agreements or international provisions of environmental, social and labor law;
- iii) 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;
- iv) has committed a serious professional misconduct;
- v) has entered into agreements with other bidders with a view to distorting competition;
- vi) has a conflict of interest that cannot be remedied;
- vii) has distorted competition from prior involvement of bidders in the preparation of the contract award procedure that cannot be remedied;
- viii) 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.;
- ix) 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

x) 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.

In the event that a contracting authority concludes that an economic operator should be excluded from a tender procedure on any of the grounds listed above, it must inform the Exclusion Committee, which is the competent body for determining whether an economic operator should be excluded from all future public procurement procedures for a specified period of time (horizontal exclusion). The Exclusion Committee is then obliged to consider whether the horizontal exclusion of the economic operator is justified and to determine the matter after giving the economic operator the opportunity to make submissions. The Exclusion Committee has the power to exclude an economic operator from all future public procurement procedures for a maximum period of 5 years from the date of the economic operator's conviction in cases where the economic operator is excluded on mandatory grounds and for a maximum period of 3 years from the date of the relevant event in cases where the economic operator is excluded on discretionary grounds.

The decisions of the Exclusion Committee are published on the website of Treasury of the Republic of Cyprus (which as noted below, is the competent authority for public contracts) where an updated register of excluded economic operators is also published.

### 8. Please describe a typical procurement procedure for a complex contract. Please summarise the rules that are applicable in such procedures. Please include a timeline that includes the key stages of the process, including an estimation for the total length of the procedure.

The typical procurement procedure for complex contracts is the competitive procedure with negotiation. The procedure typically takes place in two key stages: (a) the prequalification stage and (b) the contract award stage.

At the prequalification stage economic operators are invited to submit "requests to participate" in the procurement process which are required to be accompanied by all the information which the contracting authority considers necessary in order to evaluate their eligibility, ability and suitability to proceed to the next stage of the procedure. Following the evaluation of the request to participate, the contracting

authority selects a minimum of 3 tenderers and invites them to submit initial tenders which are intended to be subject to further negotiations.

After the submission of the initial tenders, the contracting authority usually invites the pre-selected tenderers for negotiations for the purpose of providing further information to the tenderers as to how their initial tenders may be adjusted or revised in order to meet the contracting authority's needs. The minimum requirements and award criteria stipulated in the invitation to submit initial tenders are not subject to negotiation. Following the conclusion of the negotiations, the contracting authority invites the tenderers to submit final tenders which are then evaluated for the purposes of selecting the successful tenderer.

The total length of the procedure varies significantly from case to case. In cases where the contracting authority's decision at the prequalification stage is announced and challenged by economic operators who are not invited to participate in the second stage of the procedure, the completion of the procedure may take many months.

**9. If different from the approach for a complex contract, please describe how a relatively low value contract would be procured. (For these purposes, please assume the contract in question exceeds the relevant threshold for application of the procurement regime by less than 50%)**

The typical procedure for awarding a relatively low value contract (above the relevant stipulated thresholds) is the open tender procedure. There is only one stage in this procedure. The contracting authority publishes a full set of documents which include all the criteria and requirements for the award of the contract and the date of submission of tenders.

The contracting authority specifies a period within which economic operators may submit comments or seek clarifications with respect to the tender documents.

Following the submission of tenders, the contracting authority evaluates these in accordance with the applicable rules and regulations and reaches a decision as to the tenderer to whom the contract will be awarded.

**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 Public Procurement Directorate of the Treasury of the Republic of Cyprus, which is the competent authority for public procurement provides detailed advice and guidance to contracting authorities with respect to current best practice by:

i) informing contracting authorities with regards to the announcements and the regulations published by the European Commission and which must be taken into account when entering into public procurement contracts, as well as to court decisions which affect the implementation of the legislative framework;

ii) preparing and publishing regulations, circulars, manuals, model tender forms for the contracting authorities, the public law organizations and the local authorities which provide guidance for the proper implementation of the legislation and the adoption of best practices;

iii) defining a purchasing policy capable of guiding the contracting authorities on public procurement matters which are either not governed obligatorily by the legislation or for which the legislation is not restrictive.

iv) developing, managing and making available to all interested parties tools such as the public procurement electronic system, the electronic catalogues and the framework agreements which help in developing a new culture in the way both the public and the wider public sector fulfill their needs with professionalism, efficiency and effectiveness.

In addition, the Public Procurement Directorate of the Treasury of the Republic of Cyprus has published a detailed "Best Practices Guide" which is addressed to contracting authorities and is frequently updated.

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

The criterion for awarding the contract to the successful tenderer is "*the most economically advantageous tender based on the best price-quality ratio*". In this regard, the technical offers and financial offers submitted by the tenderers are evaluated separately with a score being awarded to each offer. The tender with the highest overall score, is considered to be the most economically advantageous one.



**12. Does your jurisdiction have specific rules for the treatment of bids assessed to be "abnormally low" for the purposes of a particular procurement (i.e. a low priced bid, significantly lower than any other bid or a bid whose pricing raises questions of sustainability/viability over the contract term)? If so, is there a definition of what "abnormally low" means and please can you provide a short summary of the specific rules?**

Pursuant to section 69 of Law 73(I)/2016, when a contracting authority considers a bid as being "abnormally low", it requires clarifications from the bidder as to the price or cost it offered with respect to the relevant tender. The contracting authority evaluates the clarifications received from the bidder and may reject the tender only if the clarifications and evidence provided by the bidder do not explain in a satisfactory manner the low price or the low cost that is recommended by the bidder.

Moreover, the contracting authority must reject an abnormally low tender if the reason of being abnormally low is the non-compliance with applicable obligations of environmental, social and labour law established by EU law, national law, collective agreements or by special international environmental, social and labour law provisions.

There is no definition of the term "*abnormally low*" in the Cypriot legislation. The practice of the contracting authorities and the decisions of the Tenders Review Authority ("**TRA**") suggest that the question of whether a tender is "abnormally low" should be answered by comparing the estimated value of the relevant contract with the value of the tender. If the value of the tender is significantly lower than the estimated value of the contract, (e.g. by more than 20%) then the tender is likely to be regarded as being "abnormally low".

**13. 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. Are regulated procuring bodies required to provide these reasons for their award decision before awarding the contract in question?**

Pursuant to section 54 of Law 73(I)/2016, as soon as the procurement procedure is concluded, the contracting authority must inform all bidders of its decision to award a contract to a specific bidder.

Moreover, at the request of the bidders concerned, the contracting authority must notify as soon as possible and in any event within 15 days:

a) any rejected bidders of the reasons of the rejection of their tender;

b) any bidders who have submitted an acceptable tender, the characteristics and relevant advantages of the successful tender, as well as the name of the awarded party.

The contracting authority may not disclose certain information to the rejected bidders if the disclosure of such information may prevent the application of laws, be inconsistent to the public interest or harm the legal business interests of public or private economic operators.

**14. What remedies are available to unsuccessful bidders in your jurisdiction? In what circumstances (if any) might an awarded contract be terminated due to a court's determination that procurement irregularity has occurred?**

A bidder has the right to file a hierarchical recourse against the contracting authority's decision to award the contract to the successful bidder, before the TRA<sup>4</sup> or before the Administrative Court, which have the power and duty to review the legality of the decision and to annul the decision if they considered that there was a procurement irregularity or a breach of the general principles of Cypriot administrative law.

If an applicant proceeds with filing a recourse before the TRA, it may request, in the framework of its recourse, temporary measures seeking the suspension of the conclusion of the contract between the contracting authority and the successful bidder, until the determination of the hierarchical recourse. It is noted that the TRA usually grants temporary measures in contrast to the Administrative Court which exercises this power only in exceptional cases, and this is why many applicants choose to proceed with the filing of a hierarchical recourse before the TRA.

If the contracting authority proceeds with signing the awarded contract, the awarded contract may be terminated (declared inactive) by the TRA on the

following grounds:

- i) if the contract has been concluded without prior publication of a contract notice in the Official Journal of the EU or the Official Journal of the Republic of Cyprus without this being permitted by the public procurement legislation;
- ii) if the contract has been concluded while an application seeking temporary measures was pending before the TRA;
- iii) if the contract has been concluded while interim measures suspending the conclusion of the contract were in force;
- iv) if the contract has been concluded where the conclusion of the contract is in breach of the applicable deadlines;
- v) if the conclusion of the contract took place without priorly notifying the bidders concerned.

#### Footnotes:

<sup>4</sup> The powers of the TRA are set out in Law 104(I)/2010 with respect to the review procedures concerning the award of public contracts ("**Law 104(I)/2010**") which regulates its operation and the conduct of proceedings before it.

### **15. Are public procurement law challenges common in your jurisdiction? Is there a perception that bidders that make challenges against public bodies suffer reputational harm / harm to their prospects in future procurement competitions? If so, please provide brief comment. Assuming a full hearing is necessary (but there are no appeals), how much would a typical procurement claim cost: (i) for the defendant and (ii) for the claimant?**

Public procurement law challenges are common in Cyprus, especially with respect to high value contracts. Indicatively, in 2022, 26 recourses were filed before the TRA while in 2021, 36 recourses were filed.

There is no general perception that bidders making challenges against public bodies suffer reputational harm or other adverse consequences, but there is a perception that the TRA, which is considered to be part of the executive, is sometimes influenced by external factors. This does not apply with respect to the Administrative Court.

The costs of procurement claims depend on whether a recourse is filed before the TRA or the Administrative Court.

#### Procurement claims before the TRA

The filing fees payable to the TRA are generally determined on the basis of the amount of the awarded contract, and range from €4.000 to €20.000. In addition, the applicants are required to pay their legal fees as the TRA very rarely awards costs. The legal fees vary, depending on the law firm chosen by the applicant.

#### Procurement claims before the Administrative Court

The fees for filing a recourse before the Administrative Court are significantly lower (€138.42). The legal fees are generally the same as with respect to proceedings before the TRA, with the qualification that the Administrative Court usually awards costs in favour of the successful party.

### **16. 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). Please summarise the key stages and typical duration for each stage.**

The determination of a recourse filed before the TRA, normally takes 3-6 months. However, a determination of a recourse filed before the Administrative Court usually takes considerably longer and in some cases up to 3 years.

#### Recourse before the TRA – Key Stages

- i) Once a recourse is filed by the Applicant before the TRA, the TRA sends a copy of the recourse to the contracting authority (Respondent) which must submit a Statement of Facts within 30 days.
- ii) The TRA fixes a date (usually within 2-3 business days from the date of filing of the recourse) on which the parties are invited to appear before it and make submissions with regard to any request by the Applicant for "temporary measures", i.e. an order preventing the contracting authority from proceeding to sign a contract with the successful tenderer until the recourse is determined.
- iii) The parties appear before the TRA for the purpose stated in paragraph (ii) above.
- iv) The TRA issues its decision with regard to the granting of "temporary measures" within a maximum of 5 business days from the date on which the recourse is sent to the Respondent.
- v) The TRA provides directions regarding the filing of written submissions by



the parties and fixes the deadlines for the filing of such submissions as well as a hearing date with respect to the recourse. Usually the Applicant is given 3-5 weeks in order to prepare and file its written submissions and the Respondent is given the same amount of time counting from the date of filing of the Applicant's written submissions. vi) The Applicant files its written submissions within the deadline fixed by the TRA. vii) The Respondent files its written submissions within the deadline fixed by the TRA. viii) A hearing takes place (usually within a few days from the date of filing of the Respondent's written submissions) during which the parties or their representatives are entitled to make oral submissions and provide oral clarifications in connection with their written submissions. ix) The TRA reserves its decision. x) The TRA issues a written decision and sends it to the parties by fax and/or email.

#### Recourse before the Administrative Court – Key Stages

i) Once a recourse is filed by the Applicant, the Applicant has an obligation to serve it both on the contracting authority (Respondent) and on any "interested parties" such as the successful tenderer in cases where a recourse concerns a final decision of the contracting authority awarding the contract. ii) The Respondent is required to file an opposition to the recourse within 30 days, although extensions of time are commonly sought and granted. iii) The parties appear before the Court for directions on a date fixed by the Court Registry when the recourse is filed and the Court provides directions regarding the filing of written submissions by the parties and fixes deadlines for the filing of such submissions (usually around 6 weeks for each party, although extensions of time are commonly sought and granted). iv) Once all parties file their written submissions, the Court fixes a date for the provision of oral clarifications by the parties or their representatives in connection with their written submissions. v) On the date fixed for the provision of clarifications the Respondent delivers the relevant administrative files to the Court and the parties or their representatives are entitled to provide any such oral clarifications in connection with their written submissions as they wish. vi) The Court reserves its decision. vii) Once the Court is ready to hand down its decision the Registry informs the parties to appear before the Court for this purpose.

**17. What rights/remedies are given to bidders that are based outside your jurisdiction? Are foreign bidders' rights/remedies the same as those afforded to bidders based within your**

**jurisdiction? To what extent are those rights dependent on whether the host state of the bidder is a member of a particular international organisation (i.e. GPA or EU)?**

Bidders who are based outside the jurisdiction have exactly the same rights and remedies as bidders based within the jurisdiction. We note that in certain tender procedures there may additional eligibility criteria for bidders who are parties in international organisations such as the GPA or are signatories to various EU agreements.

**18. 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? Would such a subsidiary be afforded the same rights and remedies as a nationally owned company bidding in your jurisdiction?**

Overseas bidders with subsidiaries in the Cypriot jurisdiction are subject to exactly the same rules and are afforded the same rights and remedies as bidders based within the jurisdiction.

**19. In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues? In what circumstances will it have jurisdiction over a public procurement claim?**

The TRA (Tenders Review Authority) is the responsible public procurement review body of the Republic of Cyprus. The TRA is not a court or tribunal and its decisions are subject to judicial review.

The TRA has jurisdiction over all public procurement claims which arise from public procurement procedures falling within the scope of application of the EU public procurement Directives and the relevant harmonizing laws of the Republic of Cyprus.

**20. Are post-award contract amendments/variations to publicly procured, regulated contracts subject to regulation in your jurisdiction? Are**

**changes to the identity of the supplier (for example through the disposal of a business unit to a new owner or a sale of assets in an insolvency situation) permitted in your jurisdiction?**

Post-award variations and amendments are subject to regulation in Cyprus.

Pursuant to section 72 of Law 73(I)/2016, post award contracts may be amended without a new procurement procedure in the following circumstances:

- a) When the amendments, regardless of their monetary value, are explicitly provided for in the original contract documents;
- b) Additional works, services or supplies from the initial tenderer have been deemed necessary, which are not included in the original contract, when the change of tenderer a) cannot be made for financial or technical reasons and b) would significant disruption or substantial duplication of costs for the contracting authority. It is understood that any price increase shall not exceed 50% of the value of the original contract. When successive amendments are made, this limitation shall apply to the value of each amendment.
- c) When the following cumulative conditions are met:
  - the need for modification arose due to circumstances which could not have been foreseen by a diligent contracting authority;
  - the modification does not alter the overall nature of the contract;
  - any price increase does not exceed 50% of the value of the original contract or framework agreement. Where successive amendments are made, this limitation shall apply to the value of each amendment.
- d) Where a new tenderer replaces the initial tenderer, as a result of a) an express review or option clause as per paragraph (a) above, or b) partial or total succession of the initial tenderer, following a corporate restructuring by another economic operator who meets the qualitative selection criteria initially set out, provided that the succession does not entail other substantial modifications to the contract or c) where the contracting authority itself assumes the obligations of the tenderer to whom the public contract has been awarded to its subcontractors, pursuant to s. 71 of Law 73(I)/2016.

The procedures for handling amendments and variations are set out in Regulatory Administrative Act No. 138/2016 which, among other things, established the

Central Committee on Changes and Claims ("CCCC"), which operates under the supervision of the Treasury of the Republic of Cyprus and is the competent body for supervising and approving post-award contract amendments and variations.

**21. How common are direct awards for complex contracts (contract awards without any prior publication or competition)? On what grounds might a procuring entity seek to make a direct award? On what grounds might such a decision be challenged?**

Direct awards for complex contracts, i.e., without prior publication or competition, are uncommon and are only permitted in very limited circumstances. Specifically, as per section 29 of Law 73(I)/2016, a contracting authority may only proceed with a negotiated procedure without prior publication in the following circumstances:

- a) where, following an open or restricted procedure, either no tenders or requests were submitted, or the tenders or requests submitted are not suitable, provided that the initial terms of the contract are not substantially modified. It is noted that a tender is not suitable if it is irrelevant to the contract and manifestly incapable of satisfying the needs of the contracting authority;
- b) If the works, supplies or services can be only provided by a particular economic operator in any of the following cases:
  - (i) the objective of the contract is the creation or acquisition of a unique work of art or artistic event;
  - (ii) there is no competition for technical reasons;
  - (iii) there are grounds for the protection of exclusive rights, including intellectual property rights;

The exceptions set out in sub-paragraphs (ii) and (iii) apply only if there is no reasonable alternative or substitute and the absence of competition is not the result of an artificial restriction of the parameters of the contract;

- c) to the extent strictly necessary where, because of extreme urgency brought about by events which the contracting authority could not have foreseen, it is not possible to comply with the time limits laid down for open, restricted or competitive negotiated procedures, provided that the circumstances invoked by the contracting authorities to justify the extreme urgency are in no way attributable to them;

d) where the relevant products are manufactured solely for purposes of research, experimentation, study or development;

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 the operation or 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 a supplier ceasing operational activities or a liquidator during a liquidation procedure).

As to the grounds on which a decision may be challenged, please see our response in [Q.15](#).

Recently, our firm handled a recourse before the TRA, on behalf of the Applicant, which concerned a case where a complex contract was awarded directly to a specific company without prior publication, on the basis that there was no competition for technical reasons. The Applicant challenged the legality of the contracting authority's decision, on the basis that the provisions of section 29 of Law 73(I)/2016 were not satisfied. The challenge was successful, and the TRA issued a decision declaring the relevant contract, which had already been signed, inactive, on the basis that the conditions for direct award of the contract were not satisfied and therefore the contracting authority was not entitled to proceed with the procedure of negotiation without prior publication<sup>5</sup>.

Footnotes:

<sup>5</sup> Recourse Number 35/2021, Judgment dated 16/02/2022.

## **22. Have your public procurement rules been sufficiently flexible and/or been adapted to respond to other events impacting the global supply chain (e.g. the war in the Ukraine)?**

The events impacting the global supply chain, including the war in Ukraine have not had any effect on the procedures for the submission or evaluation of tenders, or the awarding of public contracts. However, they have given rise to significant difficulties in the performance of public contracts already signed, primarily because of the significant delays that have been caused in the delivery of materials and equipment to the contracting authorities, within the prescribed timelines. In general terms, the public procurements rules proved to be sufficiently flexible to respond to these problems and the Treasury of the Republic of Cyprus was able to provide guidance to contracting authorities in relation to a range of matters including the evaluation of the reasonableness of requests for extensions of time, extensions of the prescribed periods for completion of projects and requests for relief from the imposition of penalties for delay and other sanctions.

In addition, the sanctions imposed on the Russian Federation by the EU also caused significant difficulties in the performance of public contracts, especially in cases where Russian entities were involved in the performance of complex contracts/projects as sub-contractors or made available key experts. Again, the public procurement rules proved to be sufficiently flexible to respond to these difficulties, inter alia, by enabling the replacement of sub-contractors and key experts.

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