The Legal 500 Country Comparative Guides

Russia: Public Procurement

This country-specific Q&A provides an overview to public procurement laws and regulations that may occur in Russia.

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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)

Only the norms established by international treaties signed and ratified by the Russian Federation on the basis of a separately adopted Federal Law have priority over national law norms. The remaining acts of an international organization are not applicable to procurement law.

Ratification of an international treaty is not always required. However, if the norms of an international treaty differ from the norms of national law, such ratification is mandatory. The norms of national law are immediately brought into line with international agreements; therefore, when concluding agreements with the state, it is enough to be guided by the norms of national legislation.

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

Unlike EU countries, public procurement in the Russian Federation does not cover all forms of interaction between private business and the state. In the Russian Federation, public procurement is one of the forms of interaction with the state when state authorities (federal, regional and local) need to purchase goods, work or services for their needs in order to perform public functions. Private business in this case acts as an executor under the state contract. State purchases are carried out in accordance with Federal Law dated 05.04.2013 No. 44-FZ “On the Contract System in the Sphere of Procurement of Goods, Works, Services for State and Municipal Needs”.

The selection of the contractor is carried out on a competitive basis; in exceptional cases, it is possible to conclude a contract with a single supplier.

Areas of procurement are limited by state functions. This can be both the economic needs of the state authority and the construction of state property (for example, roads, railways, infrastructure facilities of sea and river ports, navigable hydraulic structures, state airfields, schools, hospitals or kindergartens). Private property cannot be the subject of a state contract.

Under a state contract, it is not always possible to combine all stages of the life cycle of a subject. For example, it is not possible to conclude a contract simultaneously for the design, construction and operation of a state facility. In addition, flexibility in the distribution of risks between the parties is limited: the terms of the contract are determined by the state customer; the grounds and scope of their changes and the grounds for changing the price of the contract in case of cost increase, including for reasons beyond the control of the contractor, are limited.

Public-private partnership (PPP) in the Russian Federation is regulated separately from public procurement and is an independent form. In the Russian Federation, there are two types of agreements with the state in the framework of public-private partnerships: concession agreements and public-private partnership agreements. A private investor concludes an agreement directly with a public legal entity (the Russian Federation, or a constituent entity of the Russian Federation, or a municipality), whose scope of activity includes project property.


The subject of the concession agreement and the PPP agreement is the construction and/or reconstruction and operation of property. The basic difference between concessions and PPP projects in Russia lies in the infrastructure’s owner: in concessions it is always the government, so it is a government property; in a PPP, property is always private until the end of the agreement (after completion there is an option to transfer private property to the public partner). For the rest both mechanisms are similar in terms of areas, financial conditions and procedures.

For both forms, their scope is limited. The restriction is established in relation to the type of property that can be constructed and/or reconstructed by the investor. Lists of specific types of property are established by the above laws. To summarize, for concessions this is public infrastructure, for PPP agreements it is private infrastructure.

Both of these forms allow private businesses to invest with the maximum protection of their return on the part of the state in the event of a change in the macroeconomic situation, changes in legislation, illegal actions of state authorities, the impossibility of obtaining land, an increase in tax burden and other cases agreed upon with the state in the framework of balancing risks for the project.

The concession agreement and the PPP agreement can be concluded on a competitive basis if the proposal to launch the project comes from the state, or without competition as part of an unsolicited proposal.

Private investors can conclude a production sharing agreement with the Russian Federation
for exploration and extraction of mineral resources (gas, coal, oil etc.). Such agreements are governed by Federal Law of 30.12.1995 No. 225-FZ “On Production Sharing Agreements”.

Under the agreement, the investor receives the right to explore and extract mineral resources on the agreed subsoil plot (including on the continental shelf) and a special tax regime, but must comply with the terms of the agreement and share the extracted products with the state to the agreed amount. One of the conditions for an investor is to attract mainly Russian organizations and Russian specialists to exploration and extraction, using mainly materials of Russian origin. The production sharing agreement is concluded following the results of the auction.

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

Public procurement, including a defence order, is always limited by the amount of budget funds available to the state body. The financial threshold (the initial maximum price of the contract) is determined according to the methods established by Federal Law dated 05.04.2013 No. 44-FZ “On the Contract System in the Sphere of Procurement of Goods, Works, Services for State and Municipal Needs”.

In concessions and PPP agreements there are no restrictions on the value of the contract, as the contract is executed at the expense of private investments. The volume of investments is determined on the basis of the justification of investments or project documentation and other financial parameters based on the financial model of the project. If budgetary funds are needed for the implementation of the project, their volume is also determined on the basis of the financial model of the project and agreed with the state. Since the agreement is concluded directly with the highest executive authority of the Russian Federation, a subject or a municipality (not with a state body), they are entitled to agree on any amount of state funding depending on the parameters of the state budget.

In the production sharing agreement, the initial financial terms of the auction are determined by the state on the basis of its technical and economic calculations.

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.

Within the framework of the public procurement procedure, if the initial contract price is more than 15 million roubles (about $244,600) and the procurement participant reduces the price by more than 25%, then in the case of concluding a contract with the participant, this party must provide security for the fulfilment of obligations to 1.5 times the full amount, and for contracts with an advance payment this should be not less than the advance payment.

For concessions and PPP agreements, additional requirements for the case of price reduction
have not been established.

For a production sharing agreement, the initial financial terms of the auction set a lower limit; bidders cannot bid below this limit.

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

In the Russian Federation, within the framework of public procurement, contracts are not divided into complex and ordinary contracts. All government contracts are developed by the state party. Negotiations on the terms of the contract are not held. The tender participant may submit proposals only under conditions that are the criteria of the tender (for example, cost, time, volume of goods, work and services).

The draft state contract is published together with the tender documentation and the announcement of the tender on the website https://zakupki.gov.ru/. The deadline for filing applications is set in the announcement of the tender, and for the tender it should not be less than 20 days from the date of its publication, for the auction - at least 7 days.

In concessions and PPP agreements the terms of the contract are negotiable. In the case of a tender, the public side will develop the essential terms of the agreement and include them in the terms of the tender documentation. The public side may not develop a full-fledged draft contract by the time the tender is announced, but must send this to the winner of the tender within 5 business days from the date of signing the protocol on the results of the tender.

The announcement of the tender, together with the tender documentation and the essential terms of the contract included within it are published on the website https://torgi.gov.ru. The deadline for submission of applications must be at least 30 working days for concessions and at least 30 calendar days for PPP agreements from the date of publication of the announcement.

With an unsolicited proposal, the draft agreement is developed by a private investor. The public side has the right to submit proposals regarding the adjustment of its conditions in the framework of negotiations. After agreeing on the terms of the agreement, it is published on the website https://torgi.gov.ru to receive applications from other persons who are ready to conclude agreements on these conditions. The deadline for submission of applications is 45 days from the date of publication. If at least one application is received, the public side must hold a tender for the right to conclude such an agreement.

The draft production sharing agreement is developed after the auction by a commission specially created for a specific project, consisting of representatives of the state authorities of the Russian Federation and the entity on whose territory development of the field is planned. Therefore, potential investors participate in the auction on the conditions determined by the
auction documentation. The dates of the auction are set individually for each specific project.

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?**

Requirements for the participants of the tender for the right to conclude a state contract, tender for the right to conclude a concession or PPP agreement are mandatory conditions of the tender. Participants, regardless of the format of the competitive procedure, must confirm their compliance with such requirements. However, the specific list of requirements depends on the customer and the subject of the contract and is set by the customer in the tender documentation. As a rule, these are requirements for the experience, business reputation, and financial condition of the participant, proof of absence from a supplier blacklist, the availability of licenses if they are needed to fulfil the contract, the absence of unpaid taxes and fees, and the absence of liquidation and bankruptcy procedures. One of the requirements may be participation in the competition by only Russian companies or only small businesses.

For a one-stage competition, the verification of the private owner’s compliance with the competition requirements is carried out simultaneously with the verification of their proposal. In two-stage competitions, these stages are divided. At the first stage of the competition the participant confirms compliance with the requirements for the participants of the competition; at the second stage the selected participants submit a proposal for the quantitative, qualitative and functional characteristics of the goods, work and services (volume, cost, terms and characteristics).

For public procurement, a two-stage competition is held in limited cases, mainly for scientific research, design work, experiments, surveys and for the supply of innovative and high-tech products. The competition for concessions and PPP agreements is always two-stage.

In a production sharing agreement, the establishment of requirements for bidders remains at the discretion of the auction organizer.

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?**

All persons who do not meet the requirements for bidders established by the terms of the tender are excluded from the tender. In public procurement, a participant is always excluded if:

- It is in liquidation or declared bankrupt;
- Its activity was suspended due to the presence of an administrative offense;
- It has arrears in taxes, fees or other obligatory payments to the budgets of the budget system of the Russian Federation for the past calendar year, the amount of which
exceeds 25% of the book value of its assets;
• the individual procurement participant or the head, the members of the collegial executive body, the person acting as the sole executive body, or the chief accountant of the legal entity - procurement participant has a criminal record for economic crimes and/or crimes provided for in Articles 289, 290, 291, 291.1 of the Criminal Code of the Russian Federation (with the exception of persons for whom such a criminal record has been cancelled or withdrawn) or if there are penalties with respect to these individuals in the form of deprivation of the right to hold certain positions or engage in certain activities that are associated with the performance of the contract;
• imposition of administrative sanctions against it for two years prior to the filing of an application for participation in the procurement for an administrative offense, as provided for in Article 19.28 of the Code of Administrative Offenses of the Russian Federation (bribe);
• it does not have exclusive rights to the results of intellectual activity transferred under the state contract to the customer;
• it and the customer have a conflict of interest;
• it is an offshore company;
• there are restrictions on the participation of the specified person in the procurement (for example, in some cases, foreign companies cannot participate in procurement).

Participants in the tender for the right to conclude a PPP agreement cannot be:

• Foreign legal entities and individuals;
• Russian individuals and individual entrepreneurs;
• Legal entities controlled by the Russian Federation, constituent entities of the Russian Federation or municipalities;
• Legal entities in the process of liquidation;
• Legal entities in respect of which bankruptcy proceedings have been initiated by the court;
• Legal entities whose activities are suspended due to administrative punishment;
• Legal entities that have arrears of taxes, fees, or other obligatory payments to the budgets of the budget system of the Russian Federation, arrears of interest on the use of budget funds, penalties, fines or other financial sanctions;
• Legal entities that do not have the necessary licenses and permits for the execution of the agreement, unless these documents should be obtained after the conclusion of the agreement as stipulated by the terms of the tender.

For concessions, requirements excluding participants from participation in the selection have not been established as norms. Such requirements are established in the tender documentation and, as a rule, these are requirements similar to the requirements for public procurement. Unlike PPP agreements, participants in concession tenders can be foreign legal entities and Russian legal entities controlled by the Russian Federation, constituent entities of the Russian Federation or municipalities.

For production sharing agreements, requirements excluding participants from participating
in the selection have not been established as norms.

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

In the Russian Federation, the type and staging of public procurement procedures does not depend on the amount of the contract, but depends on their subject. Procurement in which the participants’ proposals on the characteristics of the goods, work and services are important are carried out in the format of the tender. When the price matters, an auction is held.

Auctions are always held electronically on a dedicated platform. To participate in the auction, it is necessary to register on the platform and go through the accreditation procedure in accordance with the requirements of the electronic platform.

The application for participation in the auction should consist of two parts, uploaded by two different electronic documents. The first part of the application must contain consent to the execution of the contract in accordance with the conditions of the auction documentation, when purchasing goods there must be an additional indication of the country of origin and specific indicators of the goods corresponding to the values established in the auction documentation, and an indication of the trademark (if any). The second part of the application must contain:

- participant data;
- documents confirming its compliance with the requirements of auction documentation;
- copies of documents confirming compliance of the goods, work or services with the requirements of the legislation of the Russian Federation;
- corporate approval.

The application can be uploaded at any time before the deadline for applications. After the deadline for filing applications, the stage of consideration of the first part of the application begins. The application is checked for completeness and compliance with the requirements of the auction documentation. The term for consideration of the first part of applications is 3 business days. Based on the results of the consideration, a decision is made on the admission of the applicant to participate in the auction. Admission means the opportunity to submit a price offer.

The auction is held the next business day after the end of the consideration of applications and lasts for 4 hours. During this period, participants submit their proposals to reduce the contract price set by the customer.

Upon the expiration of the auction period, the offers of the participants are ranked and the stage of consideration of the second part of the application begins, at which the compliance of participants with the requirements of the auction is established. The winner is the
participant who meets the requirements of the auction and offers the lowest price.

The total duration of the auction is 28 to 34 days.

A tender can be held in standard or electronic form. A tender in standard form, held in one stage, consists of the following steps:

- publication of an announcement about the tender;
- application filing;
- application opening;
- consideration and evaluation of applications;
- summing up the results of the tender;
- conclusion of a state contract.

The total duration of a single-stage tender is 40 to 60 days. Unlike a two-stage tender, participants immediately confirm their compliance with the requirements of the tender within the framework of one application and submit a proposal for the terms of the contract requested by the customer.

A two-stage tender divides the stages of evaluating participants to the requirements of the competition and evaluating the proposals of participants under the terms of the contract. At the first stage, the compliance of the participant and their application with the requirements of the tender is assessed and the admission or non-admission of the participant to the second stage of the tender is recorded. Eligible participants prepare proposals for the terms of the contract requested by the customer (price, terms and specifications), and submit them within the deadlines established by the tender documentation for evaluation. The total duration of a two-stage tender is 70 to 100 days.

In single-stage and two-stage tenders, the winner of the tender is determined on the basis of the methodology for evaluating proposals established by the tender documentation.

A tender in electronic form is held in the same way as a two-stage tender, but the applications are submitted in electronic form on a specialized electronic platform. The total duration of such a competition is 34 to 44 days.

The tender for the right to conclude a concession agreement or a PPP agreement is always two-stage. Such a tender is held in a paper form. The stages are similar to a two-stage competition in public procurement, except that after summing up the results of the competition, negotiations are held with the winner on the terms of the concession or PPP agreement.

In addition, unlike public procurement, not all the deadlines for conducting procedures under the tender for the right to conclude a concession agreement or a PPP agreement are
The approximate general term for holding a concession tender is at least 5 months, and the deadline for holding a tender for the right to conclude a PPP agreement is at least 7 months. In our experience, these dates can be significantly longer in complex projects, when it takes a lot of time to prepare a competitive proposal for technical conditions, as well as in the case of insufficient elaboration of the project by the public side. In the latter case, it is necessary to change the conditions of the tender within the framework of the tender in accordance with the proposals of the participants.

The procedure for holding an auction for the right to conclude a production sharing agreement is established for each specific project. Since the adoption of the law, not a single agreement has yet been concluded, so there is no practice of holding auctions. The existing three agreements (Sakhalin -1, Sakhalin -2 and Kharyaginskoe) were concluded before the adoption of the current law.

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

The procedures for concluding agreements with the state in the Russian Federation do not differ depending on the amount of the contract.

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 current procedure for conducting public procurement, concluding concession agreements and PPP agreements is consistent with its objectives. Legislation is constantly being reformed and adapted to current market conditions and socio-economic needs.

The legislation on public procurement, unlike concessions and PPPs, has not yet been reoriented to the mechanism of accounting for the total cost of ownership and disposal of objects in the management of state property. However, such a task was set by the President of the Russian Federation to the Government of the Russian Federation. Currently, there is a process of developing the necessary amendments to procurement legislation that will allow conclusion of life cycle contracts aimed at optimizing the total cost of ownership and disposal of property in all areas for the state. At present the number of such areas and the variability of life cycle contracts are limited.

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

The evaluation procedure depends on the form of procurement. In auctions, the winner is the participant who has offered the lowest or highest price, depending on the conditions of the
auction. For example, when conducting public procurement of goods, works and services, the winner will be the participant who has offered the lowest price. At the conclusion of the production sharing agreement, the winner will be the participant who has offered the highest price.

In the case of procurement in the form of a tender, the criteria are the qualitative and quantitative indicators established by the customer in the tender documentation. For public procurement, the customer, depending on its subject, can establish the following criteria:

- contract price, the sum of unit prices of goods, work and services;
- expenses for the operation and repair of goods, use of the results of work;
- qualitative, functional and environmental characteristics of the procurement object;
- qualifications of procurement participants, including the availability of financial resources, of equipment and other material resources on the basis of ownership or other legal basis, work experience associated with the subject of the contract, and business reputation, specialists and other employees of a certain skill level.

The minimum number of criteria is two, one of which must be the price of the contract or the sum of units of goods, work and services. The methodology for evaluating applications by criteria is established by the customer in the tender documentation on the basis of the Decree of the Government of the Russian Federation No. 1085 dated 28.11.2013 This decision provides the formulae for evaluating applications according to the quantitative and qualitative criteria that the customer should follow when evaluating the application. Also, the aforementioned Decree establishes the ratios of qualitative and quantitative criteria for different types of contracts: for example, for a state contract for the construction of a particularly dangerous facility the value of the contract price should be 60%, and the value of the qualitative criteria should not exceed 40%.

When conducting a concession tender, the criteria are established in the decision of the concessionor on the conclusion of the concession agreement and are duplicated in the tender documentation. The criteria may include:

- terms for the construction and/or reconstruction of the object of the agreement;
- qualitative characteristics of the architectural, functional-technological, constructive or engineering solutions to ensure the construction and/or reconstruction of the object of the agreement;
- the period from the date of signing the agreement to the date when the constructed and/or reconstructed object of the agreement meets the technical and economic indicators established by the agreement;
- technical and economic indicators of the object of the agreement;
- volume of production of goods, performance of work and provision of services in the implementation of activities provided for by the agreement;
- the period from the date of signing the agreement to the date when the production of goods, performance of work and provision of services in the implementation of activities provided for by the agreement will be carried out to the amount established by the
agreement
- the amount of the private partner’s fee to the public partner;
- marginal prices for goods produced, work performed, services rendered, surcharges to such prices when carrying out activities stipulated by the agreement, and/or long-term parameters for regulating the activities of a private partner;
- obligations assumed by a private partner in cases of non-receipt of the planned income from the use of the object of the agreement, the occurrence of additional costs during the construction and/or reconstruction of the object of the agreement, and use of the object of the agreement;
- amount of financing provided by a public partner.

The procedure for evaluating applications and the values of the criteria are established by the public partner in the decision to conclude a concession agreement and are duplicated in the tender documentation. For concession tenders there are no restrictions on the significance of the criteria, and on the ratio of qualitative and quantitative criteria.

When conducting a tender for the right to conclude a PPP agreement, the criteria, as well as for concessions, are established in the decision to conclude an agreement and are duplicated in the tender documentation. A public partner may set the following criteria for the tender:

- technical criteria;
- financial and economic criteria;
- legal criteria (duration of the agreement, risks assumed by the public partner and private partner, including obligations assumed by the private partner in cases of failure to receive the planned income from the operation and/or maintenance of the object of the agreement, additional costs incurred when constructing the object of the agreement, its operation and /or its maintenance);
- amount of private financing;
- amount of state financing;
- financial effectiveness of the project;
- socio-economic effect of the project, calculated taking into account the goals and objectives identified in the relevant strategic planning documents;
- net present value of the state budget;
- the volume of obligations assumed by the public partner in case of risks during the implementation of the project.

The public partner defines the values of the competition criteria in the tender documentation. The total value of all criteria is equal to one. Given this, the value for technical and legal criteria should not be more than 0.5, for financial and economic criteria not more than 0.8. The methodology for evaluating applications is set out in the tender documentation.

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.
According to the results of the evaluation of applications, regardless of the form of procurement, the customer publishes a protocol for the review and evaluation of applications, which describes in detail the procedure for reviewing and assigning points to each application. Any participant in the competition has the right to appeal to the supervisory authority in the field of procurement (federal, regional or municipal, depending on who acts as the customer) and to the judicial authority on the results of the evaluation.

Before considering the complaint, the supervisory authority has the right to suspend the contract conclusion procedure. If the complaint is found to be substantiated, then the supervisory authority issues the order to the customer to eliminate the violations. In this case, the customer must re-conduct the assessment procedure, eliminating the violations of the assessment procedure identified by the supervisory authority.

The decision of the supervisory authority may be appealed in court within three months from the date of its adoption.

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

Competitors may appeal against decisions of the customer if they were adopted in violation of the law. First, participants in the competition appeal the decision to the procurement regulatory authority, which has the right to decide on the suspension of the procurement and/or cancellation of its results.

If the supervisory authority considers that the grounds for appeal are unfounded, it has the right to refuse the complaint. In this case, the participant has the right to appeal to the court with a complaint against the decision of the supervisory authority demanding that the contract be declared invalid if it has already been concluded by that moment. The court will consider the legality and correctness of the conclusions of the regulatory body and has the right to decide on the cancellation of such a decision and invalidation of the contract. A repeated competition will be held or the court will decide on the need to conclude a contract with the participant appealing the decision, depending on the specific circumstances of the case.

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

No, procurement legislation is more than detailed at the level of federal law and Russian Federation Government decrees. Supervisory authorities promptly consider complaints about the procurement procedures and, in case of violations, cancel the results of the tender. Current jurisprudence also confirms the absence of discrimination of participants in concluding contracts with the state.

Customers do not have instruments restricting the participation in procurement of persons who have previously appealed against the actions of the customer. Access to procurement is
equal for everyone; any restrictions must be justified by law. Otherwise, the procurement will be cancelled by the supervisory authority.

In those cases when it is important for the government to maximize the control of supplier selection, the procurement procedure from a single supplier is used based on a decision of the President of the Russian Federation.

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).**

The dispute resolution procedure does not differ from the type of public procurement. An appeal of the customer’s actions to the supervisory authority will take 5 business days. However, if documents and explanations from the bidder and the customer are required, this period will be extended by the time they are received.

Upon judicial appeal, the resolution of the dispute in the first instance may take from 4 to 6 months. This period may be increased if it is necessary to conduct examinations and take from 6 to 12 months. If in the first instance the court rules against the participant, the participant has the right to appeal such a decision in two other instances: in the court of appeal and the court of cassation. The term for consideration of the case in the court of appeal will be at least 3 months, in the court of cassation at least 4 months.

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

When customers open public procurement, foreign participants for the tender are subject to national treatment as equal to Russian participants, subject to the availability of such a clause in an international agreement with the country of residence of the foreign participant.

At the same time, in order to stimulate the Russian economy or ensure the country’s defence and security in relation to state procurement of foreign products, the Government of the Russian Federation may establish certain prohibitions and restrictions. For example, a ban on the purchase of certain engineering products for state needs (Decree of the Government of the Russian Federation of 14.07.2014 No. 656), the tool-making industry (Decree of the Government of the Russian Federation of 07.03.2019 No. 239), and defence products (Decree of the Government of the Russian Federation of 17.01.2017 No. 9).

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?**

If in relation to the subject of procurement, the legislation of the Russian Federation prohibits its procurement from foreign legal entities, then foreign companies will not be able to participate in the tender, even if it has a branch, since the legal entity created will be under
its control. Only in the case of transfer of control over a legal entity to a Russian legal entity will a company cease to be subject to the status of a foreign company.

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

No, there is no special court. Public procurement disputes are considered in the state arbitration court. Disputes regarding concession agreements, public-private partnership agreements and production sharing agreements may be considered by arbitration courts. To execute the decision of the arbitration court, it will be necessary to obtain a writ of execution in the state court.

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

After the conclusion of the state contract, the parties may change conditions that are not essential conditions of the contract.

Price, terms and volumes are always essential terms of the contract. Such conditions can only be changed in cases directly established by law (Article 95 of the Federal Law of 05.04.2013 No. 44-FZ “On the Contract System in the Sphere of Procurement of Goods, Works, and Services to Ensure State and Municipal Needs”), for example, if:

- the possibility of changing the terms of the contract was provided for by the procurement documentation and the contract, and in the case of procurement from a single supplier – by the contract;
- if the contract price is reduced without changing the quantity of goods stipulated by the contract, the volume of work or service, the quality of the goods supplied, the work performed, the services provided and other conditions of the contract;
- if, at the suggestion of the customer, the quantity of goods, the volume of work or services increases or decreases by not more than 10%;
- due to circumstances beyond the control of the parties to the contract, without changing its terms, it is impossible, and an appropriate decision has been made by the highest executive authority (federal, regional or municipal, depending on who the customer is);
- State-regulated prices for goods and services are changed legislatively.

The terms of the concession agreement may be changed by agreement of the parties. The conditions defined in the decision to conclude a concession agreement may be changed only by amending the mentioned decision. For concession agreements concluded with a constituent entity of the Russian Federation or a municipality, a change in the essential conditions will need to be agreed with the antimonopoly authority.

The terms of the PPP agreement can also be changed by agreement of the parties, and the conditions determined on the basis of the decision to conclude a PPP agreement can be
changed by amending such conditions. The approval of the antimonopoly authority to change the conditions is not required.

Changing the terms of the production sharing agreement is possible by agreement of the parties, as well as by court decision in the event of a significant change in the circumstances on which the parties proceeded when concluding the agreement.

The contractor under the state contract cannot be replaced, with the exception of the case of succession due to the reorganization of the legal entity in the form of transformation or merger. Replacement of shareholders of the contractor is not prohibited by law.

The private partner in the concession agreement and the PPP agreement can be replaced only in case of a material violation of the agreement or a significant violation of obligations to creditors. For this, the laws prescribe a special procedure. In other cases, the replacement occurs through a change of shareholders of the private partner, without changing the company.

An investor under a production sharing agreement has the right to transfer its rights and obligations fully or partially under an agreement only with the consent of the state, provided that these persons have sufficient financial and technical resources and managerial experience necessary to carry out the work under the agreement. Replacement through a change of shareholders of investors is not prohibited by law.

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

State procurement from a single supplier is possible in limited cases for certain types of procurement (Article 93 of the Federal Law dated 05.04.2013 No. 44-FZ “On the Contract System in the Sphere of Procurement of Goods, Works, Services for State and Municipal Needs”), for example, in the following cases:

- procurement of goods, work or services that relate to the area of activity of natural monopolies;
- procurement from a single contractor, determined by decree or order of the President of the Russian Federation, or determined by decision or order of the Government of the Russian Federation on the basis of instructions from the President of the Russian Federation;
- procurement of goods, work or services to an amount not exceeding 300,000 roubles ($4,900), provided that the total volume of such purchases per year does not exceed 2 million roubles ($32,000) or not more than 5% of the total annual customer purchases (but in this case no more than 50 million roubles / $819,000);
- conclusion of a contract for the supply of Russian weapons and military equipment that have no Russian counterparts and whose production is carried out by a single manufacturer, with a supplier of such weapons and military equipment included in the
register of sole suppliers of such weapons and military equipment;
- with a single participant in competitive procurement.

In total, the law contains over 50 such grounds, but all of them are more related to the acquisition of specific types of goods, work and services: cultural property, the organization of cultural events, security services, rental property, facilities for external and internal intelligence, public services for state needs, medicines and purchase of print media.

The procedure for concluding a contract with a single supplier is not regulated in detail and remains at the discretion of the customer. If the contract is concluded with a sole participant in competitive procurement, it is necessary to coordinate its conclusion with the procurement controlling authority.

The concession agreement and the PPP agreement can be concluded as part of an unsolicited proposal. The conclusion procedure as part of an unsolicited proposal is regulated by the laws governing these agreements. The procedures for both types of agreements are similar.

The initiator prepares a proposal to conclude an agreement in accordance with the requirements of the law and sends it to the supreme executive body of the public-law entity, which will be in charge of the object of the agreement. The supreme executive authority appoints the branch authority to consider an unsolicited proposal and conduct negotiations on its conditions.

If the proposal is framed in accordance with the requirements of the law and there are no grounds for refusal, the branch authority appoints negotiations with the initiator on the terms of the proposal.

The authorized body has the right to refuse to conclude an agreement, for example, if:

- the initiator does not have the rights to carry out the activities stipulated by the agreement;
- the object of the agreement is withdrawn from circulation or limited in circulation;
- the public-law entity does not have ownership rights to the object of the agreement;
- the object of the agreement is not free from the rights of third parties, unless the encumbrance is temporarily expressly permitted by law;
- the public-law entity does not have the resource provision for concluding and executing the agreement on the terms proposed by the person;
- the object of the agreement does not require reconstruction;
- construction of an agreement object is not required;
- the person initiating the conclusion of the agreement refused to negotiate to amend the proposed terms of the agreement, or as a result of negotiations the parties did not reach agreement on the terms of the agreement.
All grounds for refusal must be explicitly established in law.

Following the results of negotiations, the initiator adjusts his proposal taking into account the agreed changes and sends it to the branch authority. The branch authority will check the adjusted proposal and publish it on the website torgi.gov.ru for alternative applications. In the absence of alternative applications, an agreement is concluded with the initiator. If there are alternative applications, then a tender is held.

The production sharing agreement is concluded at the end of the auction; a conclusion with a single executor is not provided for by law.