



PUBLIC PROCUREMENT
IN TURKMENISTAN

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In Turkmenistan, public procurement remains heavily burdened by numerous permission procedures. Pursuant to the law on tenders, a contract between state agencies/state enterprises and non-state or foreign contractors is awarded as per the results of public tenders organised by the Turkmen Ministry of Finance.

The aforementioned law provides for four types of public tendering procedures: open procedures, closed procedures, invitations to tender, and the choice of one supplier. Prior to the initiation of a tendering procedure, the Turkmen company must prepare all tendering documentation that includes, inter alia, qualification documents and documents confirming forms of financing.

A Turkmen company may opt for a closed tendering procedure under the following circumstances:

- The expenses incurred during the assessment of a large number of requests for participation are not compatible with the price of a public contract;
- The public contract can only be fulfilled by a limited number of companies worldwide due to the technical nature of the contract;
- The supply contract is related to extremely important state objects.

Under Turkmen legislation, an invitation to tender procedure refers to an independent procedure that is applicable to certain categories of goods and services. Formally, this is a tender procedure without prior publication. The tendering company makes the final decision upon the evaluation of at least three participants' proposals.

According to Article 20 of the law on tenders, public contracts can be awarded without public tenders if the contract is concluded by the State Agency for Persons with Disabilities or one of the companies authorised by the government.

In all other circumstances, tendering companies must organise an open tender procedure.

Only the Ministry of Finance has the authority to organise public tenders. The decision, however, must be made by a special commission functioning under the Ministry, which is responsible for assessing tenderers' proposals and delivering the final decision. Subsequently, the commission's decision is subject to the final approval of the Turkmen company.

It should be noted that prior to the execution of the contract between the Turkmen company and the winner of the tender procedure, the draft contract must be approved by certain state agencies. Contracts pertaining to supply/purchase goods produced abroad and concluded with non-state legal entities with a value of more than around \$60,000 can only be executed by virtue of the decision of the Deputy Prime Minister of Turkmenistan and members of the Manufacturers and Entrepreneurs Union.

Moreover, the draft contract must also be approved by the State Commodity Exchange and the Supreme Control Chamber of Turkmenistan.

Public procurement legislation does not provide for any special requirements for such contracts, apart from the rule that the execution of contracts related to investment agreements and con-

tracts which require advance payment must be secured up to an amount of no more than 10% of the price of the contract using one of the following instruments:

- Bank guarantee
- Suretyship
- Down payment.

In a rare exception, Turkmen public companies are not entitled to enter into a contract with foreign companies without the prior approval of the Cabinet of Ministers of Turkmenistan, the Higher Audit Chamber and the State Commodity Exchange.

While Turkmen laws do not provide for specific requirements for the approval of the Central Bank of Turkmenistan and banks authorised to perform transactions with foreign currency, in practice Turkmen public companies are not entitled to enter into contracts with foreign counterparties without the endorsement of an authorised bank and the Central Bank of Turkmenistan.

In addition to complying with public procurement laws, we recommend strictly following the foreign currency control regulations. Following the execution of a contract, the parties must comply with all clearance procedures, which include registration with the State Commodity Exchange, customs services and an authorised Turkmen bank.

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