

UAE government sector technology contracting

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These rules do not always lend themselves to convenient application in a sophisticated IT procurement context, where the subject goods and services may be software licences and software implementation services, rather than bridges and road building expertise. In this article we outline some considerations that IT service providers should be aware of when seeking to contract with local government entities in the emirates of Abu Dhabi and Dubai, as well as at a UAE federal government level.

We regularly work with IT service providers bidding to supply software and services to local and federal government entities in the UAE, or negotiating the terms of government contracts they have already been awarded. Such service providers, especially the foreign entities, are often unaware of local government procurement rules that prescribe specific requirements for contracts entered into by government entities. As a result, a lot of time and effort is spent on trying to negotiate points that are basically 'not negotiable', pursuant to local law. It is essential that IT service providers contracting with government entities in the UAE take into account the relevant government procurement laws, so as to properly manage their own expectations and commercial risk.

At a federal level, the UAE Federal Government Contracts Regulations set out requirements for contracts to be executed with the UAE federal government. The procurement laws of other emirates are – to a degree – similar to the federal law, covering the same types of points, although not always in the same way. The Law of Contracts of Government Departments in Dubai relates to contracts with the Dubai government, and the Abu Dhabi Law of Purchases, Tenders, Bids and Warehouses relates to contracts with the Abu Dhabi government. Local procurement rules may apply in the other emirates of the UAE, namely Ajman, Fujairah, Ras al Khaimah, Sharjah and Umm al Quwain.

Determining whether an entity is subject to local government procurement rules (and, if so, which government procurement rules will apply) is an important preliminary step. In some instances, whether an entity is a government entity is not readily apparent, and there may be government-related entities to which exemptions from the relevant government procurement laws apply.

It is not uncommon for local government procurement rules to prohibit the award of a contract to a foreign company unless such foreign company is partnered with a UAE national. Foreign companies may be required to establish joint ventures with UAE nationals so that they can participate in public tenders. Exceptions may apply where the government is in dire need of the subject product or services, and no suitable alternative can be supplied by local companies.

Tender bids and performance guarantees are typical in a government procurement context. The minimum amounts of such bids or guarantees, and the length of time for which they may be retained, are generally prescribed by law. Similarly, the release triggers may be prescribed by law, and there may be limited scope to vary these requirements.

In some instances, local government procurement rules require that the governing law of the contract be the local law of the relevant government entity, and that local courts within such government entity's jurisdiction have exclusive jurisdiction over disputes. It may not be possible for a government entity to agree to arbitration, or to agree to arbitration outside its own jurisdiction, without explicit approval from the relevant ruler – and this may be very difficult to obtain in practice.

Some government procurement rules require that the government entity be entitled to vary the quantities to be provided, within a certain percentage range, at the same prices as initially contracted. This type of provision seems more applicable in the context of a contract for physical goods, and while it may be possible to apply this approach in some IT contracting scenarios, it is not likely to be of broad application.

There may be provisions that permit the government entity to withdraw a project from a service provider if the service provider is late in commencing work, or if the service provider delays a project to the point where the government entity becomes concerned that the agreed timeframe will not be met.

These examples provide a snapshot of the types of issues that may need to be considered more closely in the context of contracting with UAE government entities. IT vendors and service providers – in fact, any businesses looking to contract with government entities in the UAE, or elsewhere in the region – would be well-advised to make sure that their contracts have been considered with local government procurement rules in mind.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on local government procurement considerations in the context of technology, telecommunications and media related transactions. For further information, please contact n.oconnell@tamimi.com.