

Qatar: Proposed amendments to the public tender rules

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It was recently announced in the press that (i) the Shura (Advisory) Council in the State of Qatar (the "State") voted to revoke the law governing public procurement (Law No. 26 of 2005 (as amended by Law No. 22 of 2008 and Law No. 14 of 2010)) ("Procurement and Auctions Law") and (ii) the Cabinet, chaired by Prime Minister and Interior Minister, HE Sheikh Abdullah bin Nasser bin Khalifa Al Thani, has reviewed and taken steps to pass the draft law recommended by the Shura Council. Along with a complete overhaul of the existing law, the draft law proposes numerous changes to streamline and standardise the public procurement process in Qatar. The changes are expected to provide more clarity to the public procurement process through the development of uniform guidelines.

The Current Position

Until there is legislative change, all public departments, corporations, agencies or entities funded in whole or in part by the State of Qatar remain subject to the Procurement and Auctions Law, which excludes from its scope the armed forces, the police force and Qatar Petroleum. The law requires that the procurement of goods, commercial contracts, service contracts and contracts for works must be concluded through a tendering process, which may be classified as either local, general (open) or restricted.

Under the current law, the Central Tenders Committee (CTC) and the Local Tenders Committee (LTC) facilitate the tendering process in Qatar, with the CTC processing all public tenders relating to contracts exceeding QAR 5,000,000 in value and the LTC processing all public tenders valued at QAR 5,000,000 or less. All public tenders valued at QAR 5,000,000 or less must be concluded through local tenders in which case only commercially registered suppliers, service providers and contractors in Qatar (having Commercial Registration with the Ministry of Economy and Commerce) may participate.

The Anticipated Changes

The proposed amendments will require each ministry to establish its own tender committee. Each tender committee will comprise representatives from the Ministry of Finance and the Diwan Audit Bureau. The new law will consist of 38 articles which will create uniform public tendering guidelines. These uniform guidelines will be implemented by each individual tender committee, will be designed to protect and preserve state (public) funds and will require a higher level of disclosure than provided under the current law.

Other notable changes:

- First priority will be given local and national products followed by the products from the Gulf countries.
- Maximum monetary ceilings on public tenders will be removed.
- Tenders valued at QAR 900 million or higher can be awarded to foreign entities provided there is the presence of a Qatari partner.
- Three categories will be established with regard to tenders by the Public Works Authority (ASHGHAL): (i) tenders open only to Qatari companies and individuals; (ii) tenders valued at QAR 200 million or higher will be open to participation by foreign entities provided the presence of a Qatari partner; and (iii)

tenders valued at QAR 900 million or higher will be open to participation by foreign entities provided that the foreign entities contain a Qatari component or affiliation.

- Upon the cancellation of a tender, tender bonds will be returned within 7 days to bidders. Likewise, upon the award of a tender, tender bonds will be returned to the unsuccessful bidders within 7 days.
- The State is authorised to impose conditions, specifications and define mechanisms required to execute contracts. The State is also authorised to impose penalties under the contracts without commencing legal proceedings in the courts.
- Bidders may be prevented from withdrawing their bids after submission and penalties may be imposed on bidders seeking withdrawal. If a bidder is awarded a contract and wishes to withdraw or refuses to sign the contract or issue the required bond, then the relevant public entity may impose penalties as specified in the law.
- The entitlement of public entities to increase or decrease quantities of goods, works or services at a required rate not exceeding 20% of the contract value provided for in the current law will also be permitted by the new law. However, additional conditions must be met for the right of variation to be applied. In some circumstances, the percentage may be increased beyond 20% but this will be subject to the tender committee's recommendation and the application must follow the process specified in the new law.
- In the event a contracting company or joint venture dissolves, the State may have the right to terminate the contract. In some circumstances, the State may elect to continue the contractual relationship, after dissolution of a joint venture, if certain conditions are met.
- The Shura Council supports the view that government entities must not compete with private companies in relation to tenders and auctions in order to support foreign investments and strengthen the private sector in Qatar.

Conclusion

The proposed law is a welcome development as it promises to decentralize the existing procurement process and replace it with a more efficient framework by creating tendering committees in the various ministries and governmental departments who will administer their own tenders. Once the law is enacted, the ministries and governmental departments will play a more involved role in the public procurement process than previously which should also serve to curb excessive government spending.