

CHAMBERS GLOBAL PRACTICE GUIDES

Public Procurement 2024

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Egypt: Law & Practice

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EGYPT



Law and Practice

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1. Overview

1.1 Public Procurement Legislation

Main Legislation Governing Public Procurement

The procurement of governmental contracts is essentially governed by public procurement law No 182 of 2018, as amended (PPL), and its executive regulation issued by virtue of Minister of Finance Decree No 692 of 2019, as amended (ER). The PPL repeals and replaces the bids and tenders law No 89 of 1998.

Other Related Legislation

The Egyptian legal framework in relation to public procurement entails other legislations including law No 67 of 2010 on the partnership with the private sector in the infrastructure, services, and public utilities, as amended (the “PPP Law”) as well as law No 5 of 2015 on the preference of Egyptian products under governmental contracts (the “Egyptian Products Preference Law”), and investment law No 72 of 2017 (the “Investment Law”).

Unless specifically governed under the PPP Law, the provisions of the PPL shall not prejudice the PPP Law, Egyptian Products Preference Law, or Investment Law.

1.2 Entities Subject to Procurement Regulation

The PPL applies to all contracts concluded by public entities, including governmental bodies financed by the state budget, administrative units of the state (ie, ministries, authorities, and entities with independent budgets), local administration units, and service and economic general authorities, as well as funds privately owned by any of these entities (each referred to as an “Administrative Entity” and collectively as “Administrative Entities”).

1.3 Types of Contracts Subject to Procurement Regulation

While the PPL does not explicitly list specific types of contracts that are subject to it, the PPL provides specific rules for certain types of contracts whereby the contracting methods, among other matters, would defer based on the type of contract in place (including without limitation the purchase or lease of movables or immovables, services and construction contracts) as further elaborated in **2.4 Choice/Conditions of a Tender Procedure**. Further, the application of the PPL to contracts entered into by Administrative Entities is not subject to satisfying a minimum value threshold.

1.4 Openness and International Competition

Subject to any relevant pre-qualification requirements as further elaborated in **2.9 Restriction of Participation in a Procurement Process**, the PPL does not prevent foreign bidders from participating under any of the contracting methods recognised under the PPL.

Further, the Cabinet has the power to enable a specific Administrative Entity to contract through a direct agreement with any Egyptian or foreign investor, whether a natural or judicial person, to the extent such investor offers a fully funded investment project which achieves the economic and development plan of the contracting authority and the state, subject to obtaining the approval of the Minister of Finance and Minister of Planning and Economic Development.

1.5 Key Obligations of Awarding Authorities

Please find below a summary of some key obligations of Administrative Entities under the PPL:

- Establishment of contracting department: Each Administrative Entity is required to establish a contracting department composed of a sufficient number of qualified and trained members tasked, inter alia, with planning the Administrative Entity's needs on an annual basis and undertaking the necessary procedures for the purpose of entering into contracts in relation thereto, as well as overseeing the performance of the concluded contracts (the "Contracting Department").
- Complying with state policy: Administrative Entities are required to consider the economic, social, and environmental policies of the state as declared by the Cabinet.
- Ensuring financial capability: Prior to starting the bid procedures, the Administrative Entity

is required to ensure that the funds allocated to it are sufficient for the purpose of undertaking the subject matter of the relevant contract, and the bid documents should include evidence of said financial capability.

- Preparing the tender conditions: Prior to declaring or inviting bidders to submit their bids under any of the contracting methods, the Administrative Entity is required to prepare a tender conditions and specifications document that includes, inter alia, the contracting method, technical specifications and location of performance of the contract, expected timeframe of the upcoming procedures, payment mechanism, evaluation method, conditions of the termination of the contract, in addition to a copy of the draft contract to be entered into between the parties including their respective rights and obligations.

2. Contract Award Process

2.1 Prior Advertisement Advertisement Requirement

Transactions offered for bid under any of the contracting methods listed under the PPL are to be published on the electronic [public contacts portal](#) (PCP) save for transactions that may not be published for reasons of national security in the opinion of the Competent Authority. The Competent Authority encompasses the minister, governorate, chairman of the public authority, or those with similar powers within the Administrative Entities (the "Competent Authority"). Under certain contracting methods, there is a requirement to publicise the relevant advertisement in widely circulated daily newspapers and international newspapers in addition to publishing the same through the Egyptian embassies and consulates.

Type of Information Disclosed in the Advertisement

The advertisement should include, inter alia, the name of the relevant Administrative Entity, along with the address, phone number, fax, and email of the Contracting Department, description of the contract subject, the contracting method, its conditions and the rationale behind applying said method, the technical and financial evaluation methods, in addition to the amount of the bid bond and percentage of the performance bond.

2.2 Preliminary Market Consultations Call for Market Study

The Administrative Entity may carry out market consultations before launching the bid process by issuing a request to obtain, among other things, information, suggestions, or specifications for the purpose of undertaking a market study, determining the needs of the Administrative Entity, or preparing a plan of its yearly needs. The Administrative Entity is required to publish said request in a widely circulated daily newspaper, publish the same via the PCP, and/or invite the relevant experts.

Creation of Specialised Committee

Prior to launching the bid process, the Competent Authority is required to form a committee composed of the relevant experts, which is authorised to prepare the estimated value or original price for the relevant contract. This preparation involves undertaking a market study and reviewing relevant precedents, either pertaining to the Administrative Entity itself or other Administrative Entities. An essential aspect of this process is considering the specifications that would meet the needs of the Administrative Entity.

2.3 Tender Procedure for the Award of a Contract

Procedures for Contract Award: the Main Contracting Methods

The main contracting methods are listed under Article 7 of the PPL as follows:

- In relation to the purchasing or leasing of movables or immovable, contracting works, or for the receiving of services or technical works, contracting shall be by way of public tenders and, exceptionally, subject to the issuance of a justified decree from the Competent Authority based on the presentation of the Contracting Department. Such contracts may be entered into through one of the following methods:
 - (a) public negotiation;
 - (b) limited negotiation;
 - (c) limited tender;
 - (d) two-stage tender;
 - (e) local tender; or
 - (f) direct agreement.
- In relation to the selling or leasing of movables or immovable, projects that do not enjoy juridical personality, usufruct licensing, exploitation of real estate and projects including tourist establishments, contracting shall be by way of public auction or sealed-bid auctions, and, exceptionally, subject to the issuance of a justified decree from the Competent Authority based on the presentation of the Contracting Department. Such contracts may be entered into through one of the following methods:
 - (a) limited auctions;
 - (b) local auctions; or
 - (c) direct agreement.

The Administrative Entity may opt for any of the above contracting methods.

Other Contracting Method

Pursuant to Article 66 of the PPL, notwithstanding the contracting methods listed under the PPL, the Administrative Entity may announce a competition for “innovation work”. A specialised and neutral arbitration committee, appointed by the Competent Authority, will evaluate submissions and select the winning proposal. The announcement will detail the process for awarding prizes, recognition, or other benefits, as well as how ownership of submitted works will be handled.

2.4 Choice/Conditions of a Tender Procedure

The choice of a specific procedure is not subject to the discretionary power of the Administrative Entity, rather, the contract award is subject to the contracting methods listed under the PPL depending on the type of contract. The Administrative Entity may opt to proceed with any of the methods provided for the relevant type of contract. Please refer to **2.3 Tender Procedure for the Award of a Contract**.

2.5 Direct Contract Awards

The PPL permits direct contract awards in certain cases and subject to obtaining authorisation from the relevant entity as further elaborated below.

Permitted Cases for Direct Contract Awards

Article 62 of the PPL lists the cases where direct contract awards are permitted, including without limitation to the following:

- urgent situations requiring immediate action that cannot wait for a tender or negotiation process;
- when only one supplier possesses the necessary technical expertise and capabilities to fulfil the contract requirements or holds exclusive rights to the subject matter;

- when the subject of the contract is not included under an ongoing contract, but technical considerations necessitate continuing with the same party already performing the original contract;
- for essential ongoing operations of the Administrative Entity, when time constraints prevent a tender or negotiation process, provided the emergency is not a result of negligence or delay in initiating procedures;
- to achieve uniformity with what already exists; or
- for the purpose of improving the social and economic policies adopted by the state.

Required Authorisations for Direct Contract Awards

Direct contract awards require authorisation from the relevant entity based on the contract value:

- Up to EGP1 million: The head of the authority, administration, their equivalent in other Administrative Entities, or fund president can authorise contracts for purchasing/leasing movables, receipt of services, technical works, or consultancy studies. For contracting works, the cap is set at EGP5 million.
- Up to EGP10 million: The minister, or equivalent authority, or governor can authorise contracts for purchasing/leasing movables, receipt of services, technical works, or consultancy studies. For contracting works, the cap is set at EGP20 million.
- For contracts exceeding the limits stipulated above, the Cabinet shall be entitled in cases of strict necessity to authorise direct contract awards.

2.6 Timing for Publication of Documents

Below is a summary of certain timelines provided under the PPL.

Preparation of Tender Conditions and Specifications

Prior to declaring or inviting the bidders to submit their bids under any of the contracting methods, the Administrative Entity shall prepare a tender conditions and specifications document. Please refer to **1.5 Key Obligations of Awarding Authorities**.

The administrative Entity may amend the tender conditions and specifications document in the public interest or based on the clarifications session, subject to the approval of the Competent Authority. The purchasers of the tender conditions shall be notified of said amendments within a period not exceeding three days from the date of incorporating such amendments or the clarifications session. In all cases the period between the notification of said amendments and the scheduled date for opening of the technical offer shall not be less than seven days.

Advertisement Requirement

Please refer to **2.1 Prior Advertisement**.

The Bid Bond and Submission of the Financial and Technical Proposals

Each bid must be accompanied by a bid bond to demonstrate the bidder's seriousness. Failure to submit a bid bond will result in disqualification. The tender conditions and specifications document will specify the date and location for opening both the financial and technical proposals.

Contract Award Notification and Submission of Claims

The Contracting Department shall notify the bidders of the results of their bids (ie, acceptance, elimination, or cancellation) once approved by the Competent Authority. The bidders have the right to submit claims in writing within seven days from the day following the notification, as

further elaborated in **3.3 Obligation to Notify Bidders of a Contract Award Decision**.

Performance Bond

In relation to the purchase or lease of movables, contracting works, services, technical works, and consultation studies, the winning bidder shall submit the performance bond within ten business days from the date following the Winning Bidder Notification (as defined in **3.3 Obligation to Notify Bidders of a Contract Award Decision**) and within 20 days for foreign winning bidders. The Competent Authority may grant an additional extension of up to ten business days upon request. It is worth noting that the PPL provides specific requirements in relation to the value and validity period, among other things, depending on the nature of the contract.

2.7 Time Limits for Receipt of Expressions of Interest or Submission of Tenders

Request for Expression of Interest

The Administrative Entity may issue a request for expression of interest (RFEI) to gauge potential interest from participants before launching a formal bidding process for a specific transaction. The RFEI shall be published in one of the widely circulated daily newspapers and also via the PCP. Responding to an RFEI does not limit the number of participants who can submit bids when the formal tender process opens, nor does it guarantee any advantage or right for those who express interest. Pursuant to the ER, the RFEI shall include, inter alia, the time and place for potential participants to submit their expressions of interest.

2.8 Eligibility for Participation in a Procurement Process

The Request for Pre-qualification

The Administrative Entity may issue a request for pre-qualification to ensure the technical, finan-

cial, administrative, and human capabilities of potential bidders prior to inviting them to submit bids, per the requirements and assessment criteria provided in the request for pre-qualification documents. Said request shall be published in one of the widely circulated daily newspapers in addition to the PCP and shall specify the required documents.

Eligibility Criteria

Pursuant to the ER, the Competent Authority shall establish a committee composed of technical, financial, and legal members in addition to a member from the Contracting Department (the “Pre-qualification Committee”). The committee has the power, inter alia, to prepare the pre-qualification documents, and define the criteria and required documents in relation thereto.

The Pre-qualification Committee shall ensure that the request for pre-qualification includes the respective criteria and documents that must be submitted by the applicants evidencing the technical, administrative, and human capabilities, which vary depending on the type of contract. For example, the criteria in relation to contracting works might consider a company’s experience with similar projects, average annual workload, and the availability and functionality of relevant equipment.

2.9 Restriction of Participation in a Procurement Process

Recognition of the Pre-qualification Scheme

The PPL recognises the pre-qualification scheme; in this regard, Article 57 of the PPL lists the methods of contracting by way of limited tender including, without limitation, the transactions undertaken through a pre-qualification process whereby the invitation to participate is limited to pre-qualified bidders.

Determination of the Shortlisted Qualified Bidders

Please refer to **2.8 Eligibility for Participation in a Procurement Process** with regard to the eligibility criteria. In this context, the Contracting Department shall notify the applicants of the results of the pre-qualification subject to the approval of the Competent Authority. Applicants who fail to meet the objective pre-qualification criteria per a justified recommendation from the Pre-qualification Committee will be eliminated.

The Minimum Number of Qualified Bidders

There is a minimum requirement of three qualified bidders. If the pre-qualification process results in fewer than three qualified companies, the Competent Authority has the right to re-initiate the pre-qualification process, potentially with revised pre-qualification criteria.

2.10 Evaluation Criteria

The evaluation criteria are determined by the relevant Administrative Entity and elaborated under the tender conditions. In this regard, the Administrative Entity shall consider a number of factors while planning and preparing any upcoming transactions, including the determination of the required financial and technical criteria for the purpose of evaluating the submitted offers.

Pursuant to Article 35 of the PPL, the decision to award a contract should be based on (i) the offer that presents the best conditions and lowest prices; or (ii) a points-based mechanism as specified and determined under the tender conditions.

See **2.8 Eligibility for Participation in a Procurement Process** regarding the eligibility criteria in a pre-qualification process.

2.11 Exclusion of Tenders

According to the PPL, failure to comply with the conditions and specifications provided under the PPL, ER, or tender conditions would result in the elimination of the relevant bids.

In this regard, the ER provides a non-exhaustive list of events enabling the Administrative Entity to eliminate tenderers, including, without limitation, on the basis of any of the following:

- bids that are not signed in a timely manner, or not signed at all;
- incomplete bids in accordance with the tender conditions;
- non-submission of the bid bond;
- non-registration of tenderers/bidders in the PCP; or
- submission of a bid in a manner contrary to Article 33 of the PPL; according to said Article, tenderers/bidders shall not submit more than one offer for the same transaction, either individually or in partnership with third parties, unless such tenderer/bidder is acquiring a partnership quota that would not affect a decision in relation to the bid.

Further, as elaborated in **2.9 Restriction of Participation in a Procurement Process**, in the context of a pre-qualification process, the elimination of applicants is based on a justified recommendation from the Pre-qualification Committee. This is due to the failure of applicants to meet the objective pre-qualification criteria.

3. General Transparency Obligations

3.1 Obligation to Disclose Bidder/Tender Evaluation Methodology

The Competent Authority's decision regarding the winning bidder or any bid elimination must

be accompanied by an explanation of the rationale behind the decision.

Publication of Award Results

Following the notification of bidders as further elaborated in **3.3 Obligation to Notify Bidders of a Contract Award Decision**, the award results shall be published on billboards designated for such purpose affixed at a visible place and published on the PCP, provided that the publication includes the following:

- the results and reasons behind the decisions, whether acceptance, elimination, cancellation, awarding of bids, or the Egyptian industrial product exclusion, if any;
- the final value of the project, and the value of the Egyptian industrial component that was contracted upon, if any; and
- the origin and country of manufacture of the products included in the contracts concluded for the purpose of purchasing industrial products.

3.2 Obligation to Notify Interested Parties Who Have Not Been Selected

The Contracting Department shall notify bidders that have not been selected immediately upon the Competent Authority's approval of the awards decision as further elaborated in **3.3 Obligation to Notify Bidders of a Contract Award Decision**.

3.3 Obligation to Notify Bidders of a Contract Award Decision

Notification of the Award Decisions

According to the PPL, all bidders shall be notified by the Contracting Department of the award decisions, whether acceptance, elimination, or cancellation, subject to the Competent Authority's approval. Such notification shall be made in the form of a letter served via an express mail service through the National Postal Authority,

and shall be supported by an email or fax, as the case may be, per the details provided under the tender.

Submission of Claims by the Bidders

The bidders have the right to submit claims to challenge the award decisions in writing within seven days from the day following the notification. The winning bidder shall be notified of the acceptance of their bid within a maximum of two days after the elapse of the aforementioned seven-day period (“Winning Bidder Notification”) and the other bidders shall be notified of the same.

3.4 Obligation to Grant a Prior Hearing Inquiries Hearing

The tender conditions shall specify the deadline for bidders to submit any inquiries in writing related to the tendering conditions, and the deadline for responses to such inquiries from the Contracting Department.

The Contracting Department has an obligation to respond to these inquiries. These responses must be provided at least seven days before the date scheduled for opening the bid envelopes.

While the PPL does not explicitly mandate an inquiries hearing, the Competent Authority may choose to hold one. In such cases, a committee is formed comprising technical, financial, and legal experts, along with a member from the Contracting Department. The committee shall receive the written inquiries prior to the scheduled date of said hearing, and in accordance with the fixed period provided under the tender conditions.

3.5 Requirement for a “Standstill Period”

The PPL does not explicitly require a “standstill period” between the notification of the con-

tract award decision and the conclusion of the contract. However, the tender conditions must include the expected timetable for the upcoming procedures, which may include the timeline for the conclusion of the contract.

4. Review Procedures

4.1 Responsibility for Review of the Awarding Authority’s Decisions

The award decision shall be approved by the relevant Administrative Entity. Any bidder that is dissatisfied with any of the procurement procedures, which may include the award decision, shall have the right to submit a written complaint (the “Complaint”) to the Administrative Entity. Simultaneously, such bidder shall notify the Public Procurement Complaints Office affiliated with the Minister of Finance (the “Office”), providing a copy of such Complaint along with supporting documents. The Administrative Entity shall execute the Office’s decision on the Complaint within a period of seven days from receiving the decision.

It is worth noting that submitting a Complaint to the Office does not prejudice the complainant’s right to resort to the competent courts.

4.2 Remedies Available for Breach of Procurement Legislation

In case of violating any of the provisions of the PPL or ER, the breaching party shall be subject to disciplinary actions, without prejudice to the right of any concerned party to initiate civil or criminal proceedings against the violator.

4.3 Interim Measures

Suspension of Contract Award Procedures

The Office has the power to suspend the procedures for a transaction that is the subject of

a Complaint. The duration of this suspension is determined by the Prime Minister. In emergency cases, the suspension may not be applied. These emergency cases are assessed based on the considerations presented by the Administrative Entity involved.

Further, pursuant to the Cabinet Decree No 665 of 2021 (the “Cabinet Decree”) regulating the powers and rules of operation of the Office, the Office may, whenever necessary, suspend the procurement procedures related to the Complaint submitted before it, save for the emergency cases as clarified above. The duration of the said suspension may not exceed 14 business days from the date the Administrative Entity is notified of the suspension.

4.4 Challenging the Awarding Authority’s Decisions

The PPL and Cabinet Decree allow any concerned party or its legal representative to challenge the procurement procedures, which may include the award decision. Typically, these concerned parties are likely to include participating bidders who are directly affected by the procurement decisions.

4.5 Time Limits for Challenging Decisions

As further elaborated in 3.3 **Obligation to Notify Bidders of a Contract Award Decision**, any dissatisfied bidder shall have the right to submit a Complaint against the issued decision within seven days from the day following their notification of the decision.

4.6 Length of Proceedings

The Office shall issue its decision within 15 business days from the date of receiving the Complaint, save for the cases where studying the Complaint requires the assistance of technical

experts or the suspension of the procedures. The Administrative Entity shall execute the Office’s decision on the Complaint within seven days of receiving the decision.

4.7 Annual Number of Procurement Claims

It was not possible to identify the average number of submitted Complaints to the Office per year.

4.8 Costs Involved in Challenging Decisions

The Office shall study and decide upon the Complaints submitted free of charge, unless studying them requires the involvement of technical expert(s).

If such expert(s) are required, the Office shall notify the complainant of the cost of hiring the required expert(s), to be paid by the complainant within a period of two business days; otherwise, the Complaint will be considered withdrawn. If the Complaint is upheld, the Administrative Entity will reimburse the complainant for expert fees within seven business days of the Office’s decision.

5. Miscellaneous

5.1 Modification of Contracts After the Award

General Principle Under Egyptian Law

As a general principle under Egyptian law, the amendment of a contract shall be subject to the parties’ agreement. In this regard, the Egyptian Civil Code provides that the contract is binding on the parties, and can only be revoked or amended with their consent or on the grounds provided by law.

Contract Size Adjustment Under the PPL

The PPL permits the amendment of contracts following their award in the event that new developments arise that require the amendment of the contract's size. In such scenarios, the Administrative Entity has the authority to either increase or decrease the value of the contract. The scope of this adjustment is capped, with the value alteration not exceeding 25% for the contract agreements. For any other contracts, this adjustment limit is set at 15%, provided that these changes adhere to the original contract's conditions, specifications, and prices.

Conditions for Contract Size Adjustment

The possibility of amending a contract's size is dependent on the availability of financial resources to support the change and requires approval from either the Competent Authority or the Cabinet, depending on the contract's nature and scale. It is worth noting that the amendment should not affect the contractor's bid ranking, and shall be made during the contract term. Further, if necessary, the contract duration itself may be altered proportionally to the size change.

Contract Price Adjustment

For contract agreements that have an execution period of at least six months, the Administrative Authority is required to review and potentially revise the contract price every three months. This review takes place from the date scheduled for the opening of the technical envelopes, or from the contract signing date in situations involving direct contracting methods. The purpose of this periodic revision is to accommodate any changes in costs that have occurred since the opening of the technical envelopes or the signing of the contract, depending on the contracting method used.

5.2 Termination of Contracts

Automatic Termination of Contracts

The PPL provides the grounds for automatic termination as follows:

- if the contracting party commits any fraudulent or manipulating behaviour towards the Administrative Entity during the bidding process or contract execution, either directly or through a third party;
- if evidence emerges of bribery, corruption, or attempts to establish a monopoly; or
- if the contracting party is declared bankrupt or insolvent.

In the event of any of the above, the contract shall be automatically terminated, and the contracting party shall be removed from the register subject to obtaining the opinion of the competent advisory department within the State Council. The deletion decision shall be published on the PCP.

Termination for Contractual Breach

The PPL grants the Administrative Authority, through the issuance of a motivated decision, the right to terminate the contract or execute the contract at the cost of the contracting party, to the extent the contracting party breached any of the material conditions of the contract.

5.3 Prerogatives of the Awarding Authority

The PPL grants the Administrative Entity the right to adjust the contract size and price as well as terminate the contract subject to the requirements elaborated in **5.1 Modification of Contracts After the Award** and **5.2 Termination of Contracts**.

5.4 Recent Important Court Decisions

To the best of our knowledge, no particularly important court decisions setting any new legal concepts have been issued in the past year.

5.5 Legislative Amendments Under Consideration

We are not aware of any legislative amendments of the PPL that are being considered by the Egyptian Parliament.

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