

NORONHA ADVOGADOS

BRAZIL'S GLOBAL LAWYERS

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BIDDING PROCEDURES UNDER BRAZILIAN LAW

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BASIC LEGAL FOUNDATIONS

- ▶ Article 22, XXVIII, 33 , Federal Constitution.
- ▶ Federal Law 8.666/93.



DEFINITION

PUBLIC BIDDING – A set of procedures previously required for the entering into contracts by the public administration, which grants equal opportunity to all bidders with a view to ensuring greater efficiency and the prevalence of ethics in public transactions.



SUBJECTS TO PUBLIC BIDDING

- A) Direct Public Administration (Federal, Union, States, Federal District and Municipalities);
- B) Legislative Bodies (Federal, State and Municipal);
- C) Judiciary (Federal, State) and
- D) Public Companies.



OBJECT OF PUBLIC BIDDING PROCEDURES

- Purchase of Goods and Services
- Rentals
- Sales
- Others
- That can be provided by more than one source
- The object must be described in the invitation to bid in a clear and precise manner (Art. 40, I)

PRINCIPLES OF THE PUBLIC BIDDING PROCEDURES (ARTICLE 3)

- A) Equality of bidders;
- B) Legality;
- C) Impersonal nature;
- D) Morality;
- E) Publicity;
- F) Objective decision;
- G) Fiscalization;
- H) Competitiveness;
- I) Standardization;
- J) Formal procedure;
- K) Mandatory result; and
- L) Defense.

EXCEPTION TO THE OBLIGATION TO FOLLOW A BIDDING PROCEDURE

- A) Legal waiver (art. 17) – ex: sale of assets;
- B) Possible waiver (art. 24) - ex: small value, emergencies, public security, war, etc.
- C) Not Required (art. 25) - ex: sole producer, specialized services of a single nature, hiring of artist.

TYPES OF BIDDING (ARTICLE 45)

- A) Bidding of least price;
- B) Bidding of best technical services;
- C) Bidding of least price and best technical services; and
- D) Bidding of best offer or price.

BASIC CHARACTERISTICS OF BIDDING PROCEDURE (ARTICLES 21 AND 22)

- A) Ample publicity;
- B) Universal Nature;
- C) Previous qualification; and
- D) Collegiate decision.

INTERNATIONAL BIDDINGS

- A) Domestic resources;
- B) International resources based on international treaties, Law 8666/93 may not apply.



CONSORTIA

Leader represents consortium before the Public Authority.



PHASES OF THE BIDDING PROCEDURE

A) Opening with the publishing of the invitation to bid which must have public hearing (art. 39 and 40):

1. conditions;
2. criteria;
3. description of object;
4. period for delivery;
5. appeals possible;
6. criteria for untying;
7. dates and conditions for the execution of the agreement;
8. conditions for the receiving the object, and
9. criteria per price readjustments.

ADJUDICATION OF RESULT (ARTICLE 48)

- LEGAL EFFECTS
- APPEAL



REVOCATION, ANNULMENT OR CANCELATION (ARTICLE 49)



CANCELLED!!

CONTROL OF BIDDING

- Auditor's Courts



ADMINISTRATIVE, CIVIL AND CRIMINAL LITIGATION



PUBLIC PRIVATE PARTNERSHIPS IN BRAZIL

Will apply:

Law on Public Bids (8666/93); and

Law on Public Concessions (8987/95).



FORMS OF CONCESSION CONTRACTS UNDER PPP LAW (ARTICLE 2)

A) Sponsored Concession;

B) Administrative Concession.



BASIC CONDITIONS FOR A PPP CONTRACT

- A) Value (more the R\$20 million);
- B) Period (more than 5 years);
- C) Sole objective must not be the provision of services to the public administration.

CHARACTERISTICS OF PPP CONTRACTS (ARTICLE 4)

- A) Fiscal responsibility;
- B) Transparency;
- C) Financial sustainability; and
- D) Distribution of risks.



SUNDRY REQUIREMENTS

- A)SPE (article 9);
- B) Draft of contract in the bidding notice; and
- C) Compliance with law 8987/95 and possibility guarantees for bid proposals and adoption of ADR.

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THANK YOU !



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