The Legal 500 Country Comparative Guides

Sweden: Public Procurement

This country-specific Q&A provides an overview of public procurement laws and regulations applicable in Sweden.

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1. **Please summarise briefly any relationship between the public procurement / government contracting laws in your jurisdiction and those of any supra-national body (such as WTO GPA, EU, UNCITRAL)**

The Swedish public procurement laws are based on and implement the EU procurement directives. Whereas the EU procurement directives apply to procurements above certain threshold values, the Swedish legislator has chosen to adopt similar rules also for purchases below the EU threshold values.


2. **What types of public procurement / government contracts are regulated in your jurisdiction and what procurement regimes apply to these types of procurements?**

Swedish procurement laws apply to contracts for supplies, services or works through contract award by contracting authorities and entities. For procurements below the EU threshold values and for social and specific services as well as welfare services, a national set of rules similar to the rules of the EU procurement directives apply.

Generally, the types of contracts that are excluded from the application of the Swedish procurement laws correspond to exceptions in the EU procurement directives. The European Commission has to date issued two decisions under the procedure set out in Article 35 of Directive 2014/25/EU for the utilities sector for Sweden for (i) certain services in the postal sector; and (ii) the production and sale of electricity, which are exempted from the application of public procurement rules in Sweden.

The main public procurement laws in Sweden are:

1. **The Public Procurement Act** (Sw. lag (2016:1145) om offentlig upphandling). This act implements Directive 2014/24/EU and applies procurements within the classic sector.
3. **The Defence and Security Procurement Act** (Sw. lag (2011:1029) om upphandling på försvars- och säkerhetsområdet). This act implements Directive 2009/81/EC and applies, with certain exceptions, to contracts awarded in the fields of defence and security for (i) the supply of military equipment; (ii) the supply of sensitive equipment; (iii) works, supplies and services directly related to the equipment referred to in points (i) and (ii) for any and all elements of its life cycle; or (iv) works and services for specifically military purposes or sensitive works and sensitive services or sensitive equipment and works/services for specifically military purposes.
4. **The Act on Procurement of Concessions** (Sw. lag (2016:1147) om upphandling av koncessioner). This act implements Directive 2014/23/EU and applies to procedures for procurement by contracting authorities and contracting entities by means of a
In addition to the above, there is a law on system of choice in Sweden for certain services such as healthcare and social services; the Swedish Act on System of Choice on the public sector (Sw. lag (2008:962) om valfrihetssystem). This is an alternative to public procurement and the rules are similar to those applicable to public procurements. The system of choice enables the individual user to choose from suppliers that a contracting authority has concluded a contract with.

3. **Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction?**

There are thresholds that determine the applicable rules for a procurement and these differ between the procurement laws. The EU procurement directives apply above certain threshold values. The Swedish legislator has decided to adopt similar rules also for procurements below the EU threshold values (national set of rules). Under the national set of rules, there are also thresholds for direct awards, i.e. for procurements without requirements on tenders in a certain form. The direct award threshold does not apply to each specific contract, but the value of all direct awards of contracts of the same type awarded by the authority during the financial year shall be considered to determine if the combined value exceeds the direct award threshold. If the combined value of contracts awarded exceeds, or will exceed, the direct award threshold, it is not possible to make a direct award on the basis of low value.

The current thresholds, as from 1 January, 2020, are stated in SEK below.

**The Public Procurement Act**

<table>
<thead>
<tr>
<th></th>
<th>Supplies and services</th>
<th>Works contracts</th>
<th>Social services and other specific services</th>
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<td>State authorities</td>
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<td>(central contracting authority)</td>
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**The Act on Procurement in the Water, Energy, Transport and Postal Services Sectors**
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<tr>
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<td></td>
<td>1,142,723</td>
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**The Defence and Security Procurement Act**

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<th>Services stated in Appendix 3 of the act</th>
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<td>Direct award threshold</td>
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**The Act on Procurement of Concessions**

<table>
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<th>Works concessions</th>
<th>Concessions for social services and other specific services</th>
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<tr>
<td>Direct award threshold</td>
<td>2 746 930</td>
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4. Are procurement procedures below the value of the financial thresholds specified above subject to any regulation in your jurisdiction? If so, please summarise the position.

There are no regulated procedures for direct awards under the direct award threshold, but the contracting authority should observe the fundamental procurement principles in the awarding process. Contracting authorities are required to set guidelines for the usage of...
direct awards of contract and shall also document the conducting of all procurements for which the value exceeds SEK 100,000. The documentation shall be sufficient to justify the authority’s decisions during all stages of the procurement.

5. **For the procurement of complex contracts*, how are contracts publicised? What publication or journal is used for these purposes?**

The rules for publicising public procurements do not differ between complex contracts as such and other contracts. Complex contracts are however generally of higher values and the requirements for publication are different depending on the value of the contract. The general rule is that procurements for contracts above the EU threshold values shall be advertised in the EU’s joint advertising database; Tenders Electronic Daily (TED). The minimum period for submitting tenders correspond to those set out in the EU procurement directives. The minimum period for submitting tenders depends on the type of procedure applied and shall always be proportionate to the relevant procurement and the time that the bidders would need to prepare and submit a tender. The average tender period, i.e. the time from publication of a procurement and the last day to submit a tender, for public procurements in Sweden was 35 days for 2018. For procurements of contracts above the EU threshold values, the average tender period for 2018 was 39 days.

For procurements subject to the national set of rules (see question 2), the contracting authority shall publish a procurement by means of an advertisement in an electronic database that is publicly available. There are several such databases provided by suppliers on the Swedish market. The contracting authority’s website is generally not considered as a publicly available database, even though it is common that the contracting authority also publishes its procurements on its website. The tender period shall be reasonable, but shall as a minimum be ten days from publication. For competitive dialogues however, the same minimum tender period as for competitive dialogues above the threshold value shall be applied (i.e. 30 days as a general rule).

6. **For the procurement of complex contracts, where there is an initial selection stage before invitation to tender documents are issued, what are typical grounds for the selection of bidders?**

There is no definition of a complex contract under Swedish procurement laws. The rules for choice of selection criteria (qualification criteria) are similar, but not identical, for the procurement laws. Procurements within the classic sector are most common. The selection criteria that may be used for the initial stage of a two-stage procurement within the classic sector correspond to Article 58 of Directive 2014/24/EU and may relate to (i) suitability to pursue professional activity, (ii) economic and financial standing, or (iii) technical and professional capacity. The relevant selection criteria are similar also for procurements in the utilities sector, in the field of defence and security and for concessions.

In addition to the selection criteria, the contracting authority may limit the number of
candidates that can submit tenders when using a restricted procedure, a negotiated procedure with prior publication, a competitive dialogue or a procedure for establishment of an innovation partnership. The contracting authority shall state in the notice or invitation to confirm interest (i) the criteria and the rules the authority will apply in selecting the candidates that will be allowed to submit tenders, and (ii) the lowest number of candidates that will be allowed to submit tenders and, when relevant, the highest number that will be invited. There are no specific legal provisions stating the criteria that may be used to limit the number of bidders, but such criteria should be objective and non-discriminatory and should be proportionate in relation to the relevant procurement. For concessions, criteria for restricting the number of candidates may always be applied by the contracting authority.

7. Does your jurisdiction mandate that certain bidders are excluded from tendering procedures (e.g. those with convictions for bribery)? If so what are those grounds of mandatory exclusion?

The Swedish procurement legislation includes both mandatory and discretionary criteria for disqualification of a bidder that correspond to Article 57 in Directive 2014/24/EU. The Swedish legislator has not used the option to require that contracting authorities exclude from participation bidders that are subject to exclusion grounds under Article 57.4 and such exclusion grounds are therefore discretionary.

Bidders shall be excluded from participation in a procurement if the authority learns that the bidder, or certain representatives of the bidder, through a judgment that has entered into legal force has been found guilty of certain crimes, as specified in Article 57.1 of Directive 2014/24/EU. A bidder shall also be excluded from participation in a procurement if the bidder is in breach of its obligations relating to the payment of taxes or social security contributions in (i) the country in which the bidder is established; or (ii) the country where the procurement occurs, and this has been determined by a judicial or administrative decision that has entered into legal force. If there is no judicial or administrative decision with legal force, the authority may voluntarily exclude the bidder from participation in the procurement if the authority can demonstrate by any appropriate means that the obligations referred to have not been observed.

The discretionary grounds of exclusion correspond to the exclusion grounds of in Article 57.4 of Directive 2014/24/EU and relate to other misconduct of the bidder. These discretionary exclusion grounds include inter alia situations where the authority can show that the bidder is in breach of applicable environmental, social or labour law obligations, is in an insolvency situation or is guilty of grave professional misconduct, which renders its integrity questionable.

The bidder shall be given an opportunity to make a statement on the circumstances which the authority considers to be grounds for exclusion before being excluded. A bidder may avoid being excluded, even if the bidder is subject to an exclusion ground, if the bidder can demonstrate its reliability by having taken certain measures in relation to the criminal
8. Please describe a typical procurement procedure for a complex contract. Please summarise the rules that are applicable in such procedures.

A complex contract can be assumed to be of such value that the rules for procurement above the EU threshold values apply. For procurements above the threshold values, several procurement procedures are available. Typically, a complex contract would be a contract in which the contracting authority needs the possibility to negotiate with the bidders. The possibility for negotiated procedures differs between the procurement laws. For procurements subject to the Act on Procurement in the Water, Energy, Transport and Postal Services Sectors, it is e.g. always possible for the contracting entity to use a negotiated procedure.

The negotiated procedure with prior publication or the competitive dialogue may be suitable for complex contracts and may be used for the classic sector if

1. the needs of the contracting authority cannot be met without adaptation of readily available solutions,
2. the procurement includes design or innovative solutions,
3. the contract cannot be awarded without prior negotiations due to specific circumstances related to the nature, the complexity or the legal and financial make-up of what is being procured or because of the risks in conjunction to these circumstances, or
4. the contracting authority cannot with sufficient precision establish the technical specifications with reference to a standard, European Technical Assessment, common technical specification or technical reference.
5. A negotiated procedure with prior publication may also be used if the tenders presented in an open or restricted procedure are irregular or unacceptable.

The negotiated procedure with prior publication is a two stage procurement procedure in which all suppliers may apply to participate. The candidates that the authority later selects to participate in the procurement will be invited to submit a bid, that will form the basis for later negotiations.

The competitive dialogue is a two stage procurement procedure in which all suppliers may apply to participate. The contracting authority will thereafter hold dialogue meetings with the selected bidders. The dialogue shall continue until the authority has found the solution or solutions that satisfy the authority’s needs and thereafter the participating bidders shall be invited to submit final tenders based on the solution or solutions presented and specified during the dialogue.

A complex contract could also be procured by establishment of an innovation partnership, but this procedure is rarely used. This procedure may be used to purchase supplies, services or works in order to satisfy a need that the contracting authority assesses cannot be satisfied by
solutions that are available on the market. It is only possible to establish an innovation partnership with suppliers that conducts separate research and development operations.

9. **If different from the approach for a complex contract, please describe how a relatively low value contract would be procured?**

   The rules and procedures are generally the same for complex contracts and other contracts. The open procedure is the most commonly applied procurement procedure. The open procedure is a one stage procedure, where all interested bidders may submit a tender. The minimum period from the publication of the advert that bidders have to respond for an open procedure is as a general rule 35 days.

10. **What is seen as current best practice in terms of the processes to be adopted over and above ensuring compliance with the relevant regime, taking into account the nature of the procurement concerned?**

   Generally speaking, it is considered as good practice for contracting authorities to adopt and implement procurement strategies and internal policies/guidelines. Many contracting authorities have also adopted such internal guidelines. The internal guidelines could include routines for ensuring that employees responsible for conducting the procurements are involved at an early stage of the decision making and discussions and should also address the process for direct awards. Further, various methods for obtaining the potential bidders’ views before a procurement is published are often used. This could include holding dialogue meetings, publishing requests for information or even publishing draft procurement documents to receive the potential bidders’ views on unnecessary or cost-driving requirements as well as suitable contractual terms.

   Authorities that take measures as set out above, can achieve procurements that are well-balanced, adequately meets the needs of the authority and do not restrict the number of potential bidders through unnecessary requirements. This could also have the effect of mitigating the risk that a supplier applies for review of the procurement in court.

11. **Please explain any rules which are specifically applicable to the evaluation of bids.**

   Public contracts shall be awarded to the supplier with the tender that is **most economically advantageous** for the contracting authority, which is assessed on the basis of one of the following grounds

   - best price-quality ratio,
   - cost, or
   - price.

   The rules for evaluation of tenders correspond to Article 67 in Directive 2014/24/EU. The evaluation ground shall be stated in the procurement documents. The Swedish legislator has
not used the possibility under Directive 2014/24/EU to restrict contracting authorities’ possibility to evaluate tenders solely on the basis of price.

When evaluating tenders based on the best price-quality ratio, the authority shall evaluate the tenders based on criteria connected to the subject-matter to be purchased. The award criteria shall ensure effective competition and must not give the contracting authority unlimited freedom of choice. The criteria shall be weighted relative to each other and shall be presented so that it, based on the supplier’s information, is possible to review how well a tender satisfies the criteria. If the authority evaluates the tenders based on cost, the authority shall assess the effects of the tender in regard to cost-efficiency, for instance through an analysis of the life cycle costs. For innovation partnerships, note that the only ground for evaluation of tenders shall be the best price-quality ratio.

12. **Please describe any rights that unsuccessful bidders have that enable them to receive the reasons for their score and (where applicable in your jurisdiction) the reasons for the score of the winning bidder.**

The contracting authority shall as soon as possible notify the bidders in writing about the decision that has been made on the contract award in the procurement. The notice should include the reasons for the decision as well as the length of the standstill period, i.e. the time during which the authority is prevented from concluding an agreement and bidders may apply for review of the procurement.

Bidders may request additional information on the reasons that the bidder’s application or tender has been rejected. Upon request of a bidder that has submitted an admissible tender, the contracting authority shall also provide information about (i) the design and relative advantages of the tender selected and the name of the bidder awarded the contract or the parties in the framework agreement, and (ii) how negotiations or dialogues with the bidders have proceeded, where relevant.

Many contracting authorities are subject to the principle of publicity. Such authorities are obligated to provide the winning tender upon request, and only information therein covered by a provision of confidentiality under law may be kept confidential. This possibility to review the winning tender is often used by unsuccessful bidders. It is only possible to request copies of competitors’ tenders after the notification of an awarding decision has been made, since all information on bidders is confidential up to this point.

13. **What remedies are available to unsuccessful bidders in your jurisdiction?**

The remedies available to bidders under Swedish procurement laws include:

1. Applying for review of the procurement or decision to cancel a procurement;
2. Claim damages for harm caused by the authority’s violation of a provision of the applicable procurement act;
3. Applying for review of the effectiveness of a contract.

Following an application for review of the procurement, an administrative court may order that the procurement shall be recommenced or that it may be concluded only after corrections have been made. An application for review must be submitted to the administrative court before the end of the standstill period.

Claims for damages are handled by the general courts and the claim must be submitted to the court within one year from the date the contract was concluded between the authority and a supplier.

Contracts that have been concluded without a prior call for competition in violation of procurement laws may be declared ineffective by an administrative court following an application from another supplier. As a general rule, the application shall be submitted to the administrative court within six months from conclusion of the contract, but in certain situations the time limit is 30 days. If the court declares a contract ineffective, all contractual obligations retrospectively terminate. It is also possible to apply for review of the effectiveness of a contract if the authority has concluded the contract in breach of the standstill period and the authority has also violated another provision in the applicable procurement act, or if a contract has been subject to amendments in violation of procurement laws.

A bidder may also lodge a complaint with the Swedish Competition Authority, the supervisory authority for public procurement in Sweden. The Competition Authority may, after examining the matter, issue a statement whether the authority has violated procurement laws but has no legal power to order the contracting authority to correct or recommence a procurement. In cases of unlawful direct awards, the Competition Authority may apply to the administrative court for the contracting authority to be imposed a procurement fine.

14. **Are public procurement law challenges common in your jurisdiction?**

It is fairly common in Sweden that public procurements are challenged. During 2018, 6.1 percent of all published procurements in Sweden were challenged and subject to review by a court. There is generally no perception that bidders that make challenges suffer reputational harm or harm to their prospects in future procurements.

The final cost for a claim will depend on several factors, including the type of proceeding. There is currently no fee for a bidder for submitting an application for review of a procurement or an application for review of the effectiveness of a contract to the administrative court. For such proceedings, each party bears its own legal costs and the losing party has no obligation to compensate the winning party for its legal fees for the proceedings. The applications for review are handled as written procedures and attendance in court and hearings are extremely rare. The cost of the procedure will depend on the complexity of the case and whether the parties chose to engage external counsels or not.
For claims for damages, the final cost risk to be higher than for the applications for review. There is a small fee to be paid to the general court for the court to handle the claim. Further, the losing party will risk having to compensate the winning party for all, or part, of its legal fees for the proceeding. Claims for damages are handled by the general courts and attendance in court and hearings are generally part of the proceeding.

15. Typically, assuming a dispute concerns a complex contract, how long would it take for a procurement dispute to be resolved in your jurisdiction (assuming neither party is willing to settle its case).

An application for review of a complex contract will not as such differ from an application for review for other procurements. The time for the proceedings before court will depend on several factors, such as the number of violations of procurement and the complexity of such violations. Applications for review are written procedures and the court will communicate the statements between the parties and provide them with an opportunity to respond, until the court deems that the case has been sufficiently examined. During 2018, the average time for an administrative court of first instance to handle an application for review was 3.9 months.

It is possible to appeal a judgment of the first instance to an administrative court of appeal, but only approximately 25 percent of judgments are appealed. Leave to appeal is needed in the administrative courts of appeal. The average time for a court of appeal to deliver a judgment for cases granted leave for appeal and which are examined on the merits was 4.4 months for 2018. For appealed cases that were not examined on the merits, the average handling time in the court of appeal was 2.5 months. Very few cases are appealed from the administrative courts of appeal to the Supreme Administrative Court, which has as its main objective to set precedents where there is a need for legal guidance. The average handling time for applications for review examined by the Supreme Administrative Court was 10.9 months during 2018.

16. What rights/remedies are given to bidders that are based outside your jurisdiction?

Swedish public procurement laws do not differentiate between suppliers within the EU or countries outside the EU. In general, suppliers outside the EU have the same rights as suppliers within the EU. Under the Act on Procurement in the Water, Energy, Transport and Postal Services Sectors, contracting entities have the possibility to restrict an award to tenders covering products originating in third countries with which the EU has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for EU undertakings to the markets of those third countries.

The GPA also includes some possibilities to limit the possibility for suppliers outside the EU to participate in certain procurements, but the Swedish legislator has not used this possibility.
Where an overseas-based bidder has a subsidiary in your territory, what are the
17. **applicable rules which determine whether a bid from that bidder would be given guaranteed access to bid for the contract?**

If a subsidiary is based in Sweden or in the EU, the bidder affords the same rights and remedies as a nationally owned company.

18. **In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues?**

There is no specialist court or tribunal for public procurement issues in Sweden. Applications for review are handled by the administrative courts, whereas claims for damages are handled by the general courts.

19. **Are post-award contract amendments/variations to publically procured, regulation contracts subject to regulation in your jurisdiction?**

Amendments to public contracts are subject to regulation under Swedish procurement laws. The provisions are based on Article 72 of Directive 2014/24/EU. The Defence and Security Procurement Act does not contain any provisions for amendments of contracts, but certain amendments are possible also to such contracts.

A change of supplier is permitted if the new supplier, universally or partially succeeds into the position of the original supplier, following corporate restructuring, including takeover, mergers, acquisitions or insolvency and the change of supplier does not entail other substantial modifications to the contract or framework agreement. A change of supplier further requires that the new supplier is not subject to any mandatory exclusion ground under procurement laws and that it satisfies the criteria for qualitative selection of the original procurement. In addition, a subcontractor of a supplier may, without a new procurement, also succeed into the position of the supplier as a result of an agreement between the supplier, the authority and the subcontractor.

20. **How common are direct awards for complex contracts (contract awards without any prior publication or competition)?**

Since direct awards are not subject to publication, there are no statistics available to show how common direct awards are. Given that complex contracts would typically be of values exceeding the EU threshold values, and that the possibility to make direct awards for such contracts are limited, direct awards of complex contracts are generally not common in Sweden.

Direct awards may generally be used in three types of situations;

1. If the contract value is below the direct award threshold, provided that contracting
authority’s combined awards of contract of the same type do not exceed the direct award threshold for the financial year;
2. When the conditions for applying the where the conditions for a negotiated procedure without prior notice are satisfied; or
3. if there are exceptional reasons therefore.

A supplier who considers that there are no grounds for making a direct award, may submit an application for review of a procurement through direct award before a contract has been concluded. If a contract has been signed, the supplier may instead submit an application for ineffectiveness of the contract and request that the court shall declare that the contract is ineffective. For further information on the available remedies, see question 13.