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Sweden

Public Procurement

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

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Sweden: Public Procurement

*"Complex contracts" refers to contracts including: where the needs of the contracting authority cannot be met without adaptation of readily available solutions; contracts involving design or innovative solutions; where prior negotiation is required before a contract can be awarded due to particular circumstances related to the nature, the complexity or the legal or financial make-up of a contract or because of risks attaching to these circumstances; and where technical specifications cannot be determined with sufficient precision with reference to established technical standards, references or specifications.

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. The EU procurement directives apply to procurements above the EU threshold values, but the Swedish legislator has chosen to adopt national 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? In addition to any central government procurement regime please address the following: regulated utilities procurement regime (e.g. water, gas, electricity, coal, oil, postal services, telecoms, ports, airports), military procurements, non-central government (local, state or prefectures) and any other relevant regime. Please provide the titles of the statutes/regulations that regulate such 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, a national set of rules applies, regulated in separate chapters in the procurement laws.

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.

2. The Act on Procurement in the Water, Energy, Transport and Postal Services Sectors (Sw. lag (2016:1146) om upphandling inom försörjningssektorerna). This act implements Directive 2014/25/EU and applies to procurements within the utilities 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.

4. The Act on Procurement of Concessions (Sw. lag (2016:1147) om upphandling av koncessioner). This act implements directive 2014/23/EU.

3. Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction? Does the financial threshold differ depending on the nature of procurement (i.e. for goods, works or services) and/or the sector (public, utilities, military)? Please provide all relevant current thresholds in your jurisdiction. Please also explain briefly any rules on the valuation of a contract opportunity.

The EU procurement directives apply above certain threshold values. The Swedish legislator has decided to adopt rules also for procurements below the EU threshold values (national set of rules).

The provisions for valuation of a contract correspond to Article 5 in Directive 2014/24/EU and are the same for procurements above the EU threshold values and procurements under the national set of rules.

The current thresholds apply as of 1 January 2024 and are stated in SEK below.

The Public Procurement Act

	Supplies and services	Works contracts	Social services and other specific services
State authorities (central contracting authority)	1,546,202	59,880,179	8,109,450
Other contracting authorities	22,389,585	59,880,179	8,109,450
Direct award threshold	700,000	700,000	8,109,450

The Act on Procurement in the Water, Energy, Transport and Postal Services Sectors

	Supplies and services	Works contracts	Social services and other specific services
Contracting entities	4,789,982	59,880,179	10,812,600
Direct award threshold	1,200,000	1,200,000	10,812,600

The Defence and Security Procurement Act

	Supplies and services	Works contracts	Services stated in Appendix 3 of the act (Annex II of the directive)
Contracting authorities and entities	4,789,982	59,880,179	4,789,982
Direct award threshold	1,200,000	1,200,000	1,200,000

The Act on Procurement of Concessions

	Service concessions	Works concessions	Concessions for social services and other specific services
Contracting authorities and entities	59,880,179	59,880,179	58,880,179
Direct award threshold	2,994,008	2,994,008	2,994,008

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.

The Swedish procurement laws also regulate procurements below the EU threshold values.

A simplified regulatory framework applies for procurements below the EU thresholds, but above the national threshold for direct awards. The national set of rules was amended during 2022, to allow for more flexibility for contracting authorities. The rules enable contracting authorities to e.g. freely decide how to design the procurement procedure as there are no longer any regulated procurement procedures for such procurements.

For direct awards below the national threshold for direct awards, the contracting authority shall observe the fundamental principles of procurement in the awarding process. Contracting authorities are required to set guidelines for direct awards of contract and shall continuously 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 and shall be completed within 30 days from conclusion of a contract.

5. For the procurement of complex contracts*, how are contracts publicised? What publication, journal or other method of publicity is used for these purposes? What is the typical period from the publication of the advert that bidders have to respond to the advert for a complex contract?

Procurements for contracts above the EU threshold values shall be advertised in EU's joint advertising database; Tenders Electronic Daily (TED) as well as in a national registered database.

With the definition of complex contracts provided, a competitive procedure with negotiation or a competitive dialogue to procure a complex contract would often be applied. The minimum period for submitting tenders correspond to those set out in the EU procurement directives, as a main rule 30 days from the date on which the contract notice was sent.

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? If there are differences in methodology between different regulated sectors (for example between how a utility might undertake a regulated procurement procedure and how a government department might do so), please summarise those differences.

The selection criteria are based on Article 58 in Directive 2014/24/EU, i.e., the selection criteria shall relate to suitability to pursue the professional activity, economic and financial standing, and technical and professional ability. Examples of commonly applied selection criteria include requirements for a minimum yearly turnover and for suitable references to demonstrate a sufficient level of experience. The selection criteria shall be stated in the procurement documents.

Only candidates who fulfil the selection criteria may be selected to submit a tender. The criteria for limiting the number of candidates will depend on the type of contract and shall be objective and non-discriminatory.

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? Are there any notable features of how this operates in your jurisdiction e.g. central registers of excluded suppliers? Does your jurisdiction specify discretionary grounds of exclusion? If so, what are those grounds of discretionary exclusion?

The Swedish procurement laws include both mandatory and discretionary grounds for exclusion of a bidder that correspond to Article 57 in Directive 2014/24/EU. The Swedish legislator has not used the possibility to require that contracting authorities exclude bidders from

participation where the bidder is subject to exclusion grounds under Article 57.4, such exclusion grounds are therefore discretionary.

The mandatory grounds for exclusion include an obligation to exclude bidders from participation 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, e.g., corruption, fraud, money laundering or terrorist financing or trafficking.

Failure to comply with obligations relating to the payment of taxes or social security contributions is either a mandatory or a voluntary exclusion ground, depending on whether there is a judicial or administrative decision that has entered into legal force.

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, e.g., where 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 provided with an opportunity to make a statement on the circumstances which the authority considers to be grounds for exclusion before being excluded.

There is no central register of excluded suppliers or suppliers subject to mandatory exclusion grounds in Sweden. A solemn declaration that a bidder is not subject to exclusion grounds is therefore often required. There is a legislative proposal to give the Swedish Companies Registration Office the task of performing certain background checks of bidders, but at the time of this publication, it is not clear whether the proposal will be adopted.

For procurements subject to the national set of rules, there are no mandatory grounds for exclusion and the contracting authority is free to determine the exclusion grounds for each procurement. This could include exclusion grounds in addition to those listed in the EU directives as long as such grounds of exclusion grounds are clearly stated in the procurement documents and conform with the fundamental principles of procurement.

8. Please describe a typical procurement procedure for a complex contract. Please

summarise the rules that are applicable in such procedures. Please include a timeline that includes the key stages of the process, including an estimation for the total length of the procedure.

With the definition provided of a complex contract, the negotiated procedure with prior publication or the competitive dialogue would be suitable procurement procedures. The total length of the procedure will depend on several factors, such as the complexity of the contract, the volume of the procurement documents and whether there is one or more negotiation sessions.

The negotiated procedure with prior publication is a two-stage procurement procedure in which all suppliers may apply to participate. The minimum time limit for submitting a request to participate is 30 days, but this time limit may be shortened if there are time constraints. The candidates that the authority later selects to participate in the procurement (please refer to question 6) will be invited to submit a bid, that will form the basis for later negotiations before the contract is awarded. The minimum time limit for submitting a bid is 30 days, but this time limit may also be shortened e.g. if the authority accepts that bids are submitted in electronic form or if there are time constraints.

9. If different from the approach for a complex contract, please describe how a relatively low value contract would be procured. (For these purposes, please assume the contract in question exceeds the relevant threshold for application of the procurement regime by less than 50%)

The open procedure is the most commonly applied procurement procedure. The open procedure is a one stage procedure, where all interested bidders may submit tenders. There are no negotiations when an open procedure is applied.

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?

Contracting authorities should adopt and implement procurement strategies and policies or guidelines for the conduct of procurements. Internal guidelines may 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 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 and ensure best value for money. This could also have the effect of mitigating the risk that a supplier applies for review of the procurement in court.

Authorities can also find guidance for the selection of criteria on the National Agency for Public Procurement's database. The database includes ready-to-use sustainability criteria for several types of procurement subjects. The sustainability criteria mainly focus on environmental and social sustainability and have been developed together with representatives from the public and private sector.

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

Only bids that meets all mandatory requirements and are complete may be subject to evaluation.

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 evaluation ground shall be stated in the procurement documents. The rules for evaluation of tenders correspond to Article 67 in Directive 2014/24/EU. 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.

12. Does your jurisdiction have specific rules for the treatment of bids assessed to be "abnormally low" for the purposes of a particular procurement (i.e. a low priced bid, significantly lower than any other bid or a bid whose pricing raises questions of sustainability/viability over the contract term)? If so, is there a definition of what "abnormally low" means and please can you provide a short summary of the specific rules?

Swedish procurement legislation does not include any definition of what an "abnormally low" tender would be.

For procurements above the EU threshold values, Swedish procurement legislation regulates a process for the treatment of abnormally low tenders that corresponds to that set out in Article 69 of Directive 2014/24/EU. This includes a requirement to request an explanation from the bidder if the contracting authority identifies a tender as abnormally low and an obligation to reject the tender if the bidder has not satisfactorily explained the low price or cost.

For procurements below the EU thresholds, the contracting authority has a possibility, but no obligation, to reject a tender that is identified as abnormally low. Before a tender may be rejected, the contracting authority shall require an explanation from the bidder and the tender may only be rejected after the contracting authority deems that the explanation is not adequate.

13. 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. Are regulated procuring bodies required to provide these reasons for their award decision before awarding the contract in question?

The contracting authority shall as soon as possible notify

the bidders in writing about the decision that has been made on the contract award. 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 in Sweden are subject to the principle of public access to official documents. Such authorities are obligated to provide the winning tender to a competitor upon request. To the extent information in a tender is covered by a provision of confidentiality under law, such information may be kept confidential if disclosure of the information could damage the bidder. 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 relating to bidders and/or the bids is confidential up to this point.

14. What remedies are available to unsuccessful bidders in your jurisdiction? In what circumstances (if any) might an awarded contract be terminated due to a court's determination that procurement irregularity has occurred?

The remedies available to bidders under Swedish procurement laws include:

1. Applying for review of the procurement or of a decision to cancel a procurement;
2. Claiming damages for an authority's violation of procurement legislation; and
3. Applying for review of the effectiveness of a contract concluded by a contracting authority and a supplier.

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 (minimum 10 days).

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 supplier should have become aware that a contract was concluded between the authority and a supplier or, if a court has declared a contract ineffective, within one year after the judgment became final.

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.

15. Are public procurement law challenges common in your jurisdiction? Is there a perception that bidders that make challenges against public bodies suffer reputational harm / harm to their prospects in future procurement competitions? If so, please provide brief comment. Assuming a full hearing is necessary (but there are no appeals), how much would a typical procurement claim cost: (i) for the defendant and (ii) for the claimant?

It is fairly common in Sweden that public procurements are challenged. In recent years, approximately 6 – 8 per cent of all published procurements were appealed.

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 no fee for a bidder for applying for review of a procurement or for applying 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. For review cases, the procedures are written and attendance in court and hearings are rare. The cost for the procedure will depend on the complexity of the case and whether the parties

choose 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.

16. 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). Please summarise the key stages and typical duration for each stage.

The time for the proceedings before court will depend on several factors, such as the number of violations of procurement laws and the complexity of such violations. Applications for review are generally handled as written procedures. The court will communicate the submission from one party to the other party and provide the party with an opportunity to respond. This will continue until the court deems that the case has been sufficiently examined. In recent years, the average time for an administrative court of first instance to handle an application for review 3.5 – 4.2 months for cases examined on the merits.

It is possible to appeal a judgment of the first instance to an administrative court of appeal but leave for appeal is needed for a case to be examined on the merits by the administrative court of appeal.

17. What rights/remedies are given to bidders that are based outside your jurisdiction? Are foreign bidders' rights/remedies the same as those afforded to bidders based within your jurisdiction? To what extent are those rights dependent on whether the host state of the bidder is a member of a particular international organisation (i.e. GPA or EU)?

Generally, Swedish public procurement laws do not differ between suppliers within the EU and suppliers based in countries outside the EU. This said, 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.

Under EU Regulation 2022/1031, International Procurement Instrument, the European Commission has certain powers to decide to restrict the access of economic operators, goods or services from a third country to public procurement procedures within the EU. The European Commission will provide further guidance to facilitate the application of the International Procurement Instrument.

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.

Restrictions apply to the awarding and execution of public contracts due to EU's sanctions against Russia under Regulation (EU) amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. Further, restrictions apply to purchase of certain goods or services from Russia and Belarus.

18. Where an overseas-based bidder has a subsidiary in your territory, what are the applicable rules which determine whether a bid from that bidder would be given guaranteed access to bid for the contract? Would such a subsidiary be afforded the same rights and remedies as a nationally owned company bidding in your jurisdiction?

A subsidiary based in Sweden affords the same rights and remedies as a nationally owned company.

However, national legislation relating to national security interests may in practice lead to the exclusion of subsidiaries with foreign ownership in certain situations. The EU's sanctions against Russia could also restrict access to public procurements for Swedish entities with Russian ownership (please refer to Question 17).

19. In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues? In what circumstances will it have jurisdiction over a public procurement claim?

There is no specialist court or tribunal for public procurement issues in Sweden.

However, as of January 2024, the Swedish Competition Authority has the right to impose a procurement sanction fee on contracting authorities for unlawful direct awards as the first instance, instead of having to apply for an administrative court to impose such fines. A decision of the Swedish Competition Authority to impose such fine may be appealed to an administrative court.

20. Are post-award contract amendments/variations to publicly procured, regulated contracts subject to regulation in your jurisdiction? Are changes to the identity of the supplier (for example through the disposal of a business unit to a new owner or a sale of assets in an insolvency situation) permitted 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 explicit 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.

21. How common are direct awards for complex contracts (contract awards without any prior publication or competition)? On what grounds might a procuring entity seek to make a direct award? On what grounds might such a decision be challenged?

The main rule is that public contracts shall be subject to

prior publication and the possibility to make direct awards are limited. Direct awards of complex contracts, as defined for the purpose of this questionnaire, are generally not common in Sweden.

We expect that a complex contract will be above the EU threshold values. For such contracts, direct awards without prior notice may be used when the conditions for using a negotiated procedure without prior notice are satisfied, e.g., when competition is absent for technical reasons, or the subject-matter of procurement is protected by exclusive rights, and therefore can only be supplied by a certain supplier.

Before a contract is concluded, a supplier who considers that there are no grounds for making a direct award may apply for review of the procurement and request that the procurement may not be completed.

After a contract has been concluded, a supplier who considers that there are no grounds for making a direct award may instead apply for review of the effectiveness of the contract and request that the court shall declare the contract ineffective (i.e. null and void). For further information on the available remedies, please refer to

question 14.

22. Have your public procurement rules been sufficiently flexible and/or been adapted to respond to other events impacting the global supply chain (e.g. the war in the Ukraine)?

In relation to ongoing contracts, there have been challenges in e.g. complying with the agreed delivery times or continuing to supply products or services at the price agreed in the initial contract. Even though the public procurement regime includes possibilities to modify public contracts, there are limitations as to the modifications permitted. The legal framework has often been perceived as insufficient to meet the need for modifications. We have also noted that there have been uncertainties in terms of what evidence is required from the supplier to demonstrate that there is a need for a modification, e.g. a price increase, with various contracting authorities requiring different types of evidence that could also include commercially sensitive information. This has been perceived as difficult by some suppliers, as documents submitted to contracting authorities may become public documents.

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