



---

# Guidelines for Contracts with Public Authorities

5th Edition

---



---

# Guidelines for Contracts with Public Authorities

2023 Update

---

Public  
Procurement

5th Edition

Contributions  
from the following

# Legalink member firms

---

Prieto Abogados

Jakoby Rechtsanwaelte

Hassans

Szecskay

Dua Associates

Cocuzza

Gasser Partner

Azman Davidson & Co.

Ramos Ripoll & Schuster

Divina Law

Sérvulo & Asociados

PR Legal

Barun Law

López-Ibor Abogados

Hellström

Lindborg & Mazor LLP

Chile

Germany

Gibraltar

Hungary

India

Italy

Liechtenstein

Malaysia

Mexico

Philippines

Portugal

Serbia

South Korea

Spain

Sweden

U.S.A.

## 1. Does your legal system provide specific procedures for the award of contracts by contracting authorities?

Yes, for procurements that exceeds the threshold in the applicable EU directive for procurement when it comes to the directives 2009/81 EG, 2014/24/EU and 2014/25/EU. For procurements that are below the threshold in the directives above the contracting authority are free to set up the procedure as long as it follows the principles for public procurement and the specific regulations in the applicable law. For procurements within the "light regime" in directive 2014/24/EU and 2014/25/EU the contracting authority are free to set up the procedure as long as it follows the principles for public procurement and the specific regulations in the applicable law, even if the procurement exceeds the threshold. The same goes for procurements of B-services according to the directive 2009/81/EG. For procurements of concessions, directive 2014/23/EU, there are no specific procedures at all.

The Swedish procurement laws are that follow:

- Lag (2016:1145) om offentlig upphandling (LOU) (directive 2014/24/EU)
- Lag (2016:1146) om upphandling inom försörjningssektorerna (LUF) (directive 2014/25/EU)
- Lag (2016:1147) om upphandling av koncessioner (LUK) (directive 2014/23/EU)
- Lag (2011:1029) om upphandling på försvars- och säkerhetsområdet (LUFSS) (directive 2009/81/EG)

## 2. Do the procedures for the award of contracts depend on the kind of goods, services etc., which are to be procured?

There are no procedures for procurements of the services that fall within the scope of the "light regime" or B-services.

### 3. Do the procedures for the award of contracts and/or certain procedural regulations depend on the value of the goods, services etc., which are to be procured (thresholds) and if so, what are the thresholds?

Yes, see below:

| Procurements covered by directive 2014/24/EU   | Goods & services | Works          | Services within the light regime |
|--|------------------|----------------|----------------------------------|
| Central contracting authorities  | 1 456 476 sek    | 55 991 099 sek | 7 802 550 sek                    |
| Other contracting authorities  | 2 236 731 sek    | 55 991 099 sek | 7 802 550 sek                    |
| De minimis limit for when the contracting authority <u>has to</u> expose the procurement for competition | 700 000 sek      | 700 000 sek    | 7 802 550 sek                    |

| Procurements covered by directive 2014/25/EU  | Goods & services | Works          | Services within the light regime |
|---|------------------|----------------|----------------------------------|
| Contracting entities  | 4 483 865 sek    | 55 991 099 sek | 10 403 400 sek                   |
| De minimis limit for when the contracting entity <u>has to</u> expose the procurement for competition | 1 200 000 sek    | 1 200 000 sek  | 10 403 400 sek                   |

| Procurements covered by directive 2009/81/EG   | Goods & services | Works          | B-services    |
|--|------------------|----------------|---------------|
| Contracting authorities or entities  | 4 483 865 sek    | 55 991 099 sek | 4 483 865 sek |
| De minimis limit for when the contracting authority or entity <u>has to</u> expose the procurement for competition | 1 200 000 sek    | 1 200 000 sek  | 1 200 000 sek |

| Procurements covered by directive 2014/23/EU   | Service-concessions | Concessions of works | Concessions of services within the light regime |
|--|---------------------|----------------------|---|
| Contracting authorities or entities  | 55 991 099 sek      | 55 991 099 sek       | 55 991 099 sek                                  |
| De minimis limit for when the contracting authority or entity <u>has to</u> expose the procurement for competition | 2 799 554 sek       | 2 799 554 sek        | 2 799 554 sek                                   |

**4. In what way does the contracting authority have to inform the market about the intended procurement?**

If the procurement is covered by any of the procurement directives 2014/23/EU, 2014/24/EU, 2014/25/EU or 2009/81/EG (procurements above the threshold), the procurement has to be published with a notice in TED and in a national registered notice platform (see more information about registered notice platforms in answer to question 5). For procurements under the threshold according to the directives above, the contracting authority has to publish a notice in a national registered notice platform.

**5. Are calls for tender from contracting authorities published on a single or on multiple freely accessible website(s)? If yes, please name the website(s).**

Calls for tender are published on multiple freely accessible websites. Besides TED, which is mandatory for publishing notices for procurements that are covered by the applicable EU directive and exceeds the threshold, there are the following registered notice platforms in Sweden:

| Platform                 | Supplier            | website  |
|--------------------------|---------------------|--|
| e-Avrop                  | Antirio AB          | <a href="http://www.e-avrop.com">www.e-avrop.com</a><br><a href="http://www.pabliq.se">www.pabliq.se</a> |
| KommersAnnonns.se        | Antirio System AB   | <a href="http://www.kommersannonns.se">www.kommersannonns.se</a>   |
| Mercell Annonnsdatabas   | Mercell Commerce AB | <a href="http://www.opic.com/upphandlingar">www.opic.com/upphandlingar</a>                               |
| Konstpool                | Konstpool AB        | <a href="http://www.konstpool.se">www.konstpool.se</a>   |
| AreaChica Annonnsdatabas | AreaChica AB        | <a href="http://www.areachica.se">www.areachica.se</a>   |

**6. Does a potential bidder that is interested in the contract need to have a specific legal form, e.g., corporation, to submit a tender?**

No.

**7. Are bidders allowed to submit joint offers, e.g., as general contractor and subcontractor or as bidding consortium?**

Yes, both options are possible.

**8. Do potential bidders interested in the contract need to have a registered office or branch office in your country or is it possible to submit a tender for the contract directly from abroad?**

It is possible to submit a tender for the contract directly from abroad.

**9. If it is possible for foreign bidders to submit a bid for a contract to a contracting authority directly from abroad, does the foreign bidder have to consider certain additional aspects, such as having to provide certain additional supporting documents or whether domestic bidders receive preferences in the award of contracts?**

Foreign bidders may have to submit some supporting documents to their tenders that domestic bidders do not have to submit to their tenders, due to the free access of public records from Swedish authorities. This treatment has been accepted by the Swedish supreme administrative court.

**10. Is a multinational bidding consortium allowed to submit a bid?**

There are no rules against bids from multinational bidding consortiums in the Swedish procurement laws.

**11. In which language do the tenders have to/can be submitted and which form is required, e.g., written form, fax, e-mail, or digital?**

This is decided in each and every procurement. The bidding language is almost exclusively Swedish, but sometimes the bids can be submitted in English. It is further common that occasional specific documents are allowed to be submitted in other languages as well, but as stated above, this is decided in each specific procurement.

**12. Are there any legal regulations governing the time within which bids have to/can be submitted to the contracting authority?**

Yes and no. The procurement regulations govern the minimum time limits that are regulated in the EU procurement directives, but the contracting authorities may choose a longer period for the suppliers to submit a tender. For procurements that are not fully covered by the directives the time to submit a tender has to be "a reasonable time". What a reasonable time may be, is set out in each specific procurement.

**13. Can the bidders claim their costs for preparing their bid? If so what are the conditions for and the maximum amount of reimbursement?**

In general, no. However, if the contracting authority has violated a procurement regulation, and the bidder has suffered damages, the bidder might have the right to claim damages. A case for damages is handled by the Swedish general courts, while cases regarding breaches of the procurement regulations are handled by the Swedish administrative courts. The bidder has to prove that it is likely that he would have won the contract if the violation of the regulation wouldn't have taken place. The bidder also has to try to minimize their risk for suffering damages. This includes, for example, that the bidder first would have to appeal to the administrative court for a review of the procurement before claiming damages in a general court. In general, the bar is set high for bidder's possibility to be awarded damages within the scope of a public procurement.

**14. Are there any selection criteria set by law that bidders have to satisfy to in order to receive the award of a contract and can the contracting authority establish its own additional selection criteria?**

It is never mandatory for a contracting authority to use certain selection criteria in a procurement. If the procurement is fully covered by the applicable procurement directive, the national procurement law limits the contracting authority to what sort of selection criteria that may be used. This goes for procurements covered by directive 2014/23/EU, 2014/24/EU, 2014/25/EU and 2009/81/EG. For procurements under the threshold, the contracting authorities have more flexibility to establish its own selection criteria.

**15. Does your legal system provide legal protection against the proposed award of a contract to a competing bidder even before the contract with the competitor is actually awarded (primary legal protection)? If so, please generally explain the proceedings. Is such a primary legal protection available to foreign bidders without any restriction?**

Yes, this possibility is available for all bidders no matter the nationality of the bidder. A bidder can appeal to the administrative court for a review of the procurement as soon as the procurement is considered to have been started/launched. This is normally the case when the procurement is published in a notice database/TED.

**16. If primary legal protection exists in your country, does it depend on certain conditions, i.e., certain thresholds or the kind of goods, services, etc., to be procured? If so, what are the conditions?**

No, it's the same for all kinds of procurement.

**17. If there is no primary legal protection, is there legal protection granted after the contract has been awarded, e.g., through damage claims, etc. (secondary legal protection)? If so, what are the principal conditions that have to be presented to a court in order to receive a damage award?**

Apart from the primary legal protection described above, an award may be appealed for a review of the validity of an already entered contract (in some cases), and damage claims. There are also rules regarding the supervisory authority's supervisory work and its possibility to apply for procurement damages (a sort of fine that accrues to the state).





## 18. Can your office

i. give legal advice to foreign clients concerning the relevant formal conditions for preparing a proper bid, etc., and assist in the procurement procedure in your country?

Yes

ii. represent foreign clients seeking primary and secondary legal protection before all public offices/courts in your country?

Yes

iii. Please name a contact person within your office for questions of public procurement law

Our partner, Ponthus Anderson, is the head of Hellström's team for public procurement and public law.

[Ponthus.andersson@hellstromlaw.com](mailto:Ponthus.andersson@hellstromlaw.com)

Phone number: +46 709 55 09 14

