IN-DEPTH

Government Procurement

Contributing editor
Jan Bonhage
Hengeler Mueller



LEXOLOGY

Government Procurement

Contributing Editor

Jan Bonhage

Hengeler Mueller

In-Depth: Government Procurement (formerly The Government Procurement Review) provides an annual survey of the most consequential legal developments in government procurement worldwide, and their practical impact on contractors, suppliers and service providers. It offers insightful analysis of the key features of the procurement regime in each jurisdiction, including relevant authorities, bidding procedures and eligibility, award criteria and mechanisms to challenge awards, among other things.

Generated: October 21, 2026

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2026 Law Business Research

LEXOLOGY

Explore on **Lexology**

Switzerland

Astrid Waser and **Benoît Merkt**
Lenz & Staehelin

Summary

INTRODUCTION
YEAR IN REVIEW
SCOPE OF PROCUREMENT REGULATION
SPECIAL CONTRACTUAL FORMS
THE BIDDING PROCESS
ELIGIBILITY
AWARD
INFORMATION FLOW
CHALLENGING AWARDS
SPECIAL CONSIDERATIONS
OUTLOOK AND CONCLUSIONS
ENDNOTES

Introduction

Public procurement in Switzerland is regulated by international treaties, and federal, cantonal and intercantonal law. The international treaties set out standard principles, constitute the basic legal framework of rights and obligations, and are binding on authorities. These include international framework agreements such as the Government Procurement Agreement of 15 April 1994 (GPA) (which was replaced in Switzerland by the revised World Trade Organization Agreement on Government Procurement (GPA 2012) on 1 January 2021), the Bilateral Agreement between the European Community and Switzerland on certain aspects of public procurement of 21 June 1999 (EU–CH AAGP) and the convention establishing the European Free Trade Association of 4 January 1960 as amended (the EFTA Agreement). As Switzerland is not a member state of the European Union, EU law on public procurement is not applicable.

At state level, public procurement is governed by federal law. The principal legislative acts regulating federal public procurement in Switzerland are the Federal Act on Public Procurement of 21 June 2019 (FAPP), the corresponding Federal Ordinance on Public Procurement of 12 February 2020 (OPP) and the Ordinance on the Organisation of Public Procurement of the Federal Administration of 24 October 2012. The FAPP sets out general procurement principles and also contains more detailed provisions. The OPP contains specific provisions for the implementation of the FAPP.

Every canton in Switzerland has its own procurement law governing cantonal administration procurement. The main legislative act for regional and local authority procurements is the revised Intercantonal Agreement on Public Procurement of 15 November 2019 (IAPP 2019), which harmonises the legal framework within the cantons and the cantonal public procurement regulations of each canton.

The purpose of the FAPP is to make efficient use of public funds by enabling competition between tenderers. The FAPP stipulates that the contract must be awarded to the tenderer with the most advantageous offer. Furthermore, transparency as an important tool to facilitate competition is a fundamental principle of the procurement procedure and stated as a purpose of the FAPP. The principles of equal treatment and non-discrimination are also key to the FAPP. Additionally, the FAPP states that tenderers must guarantee compliance with health and safety regulations, employment regulations – including equal treatment of men and women – and environmental regulations.

In principle, exemptions from the general regime of applicable procurement laws derive directly from the relevant procurement acts. The FAPP, for example, contains a list of procurements to which the FAPP does not apply. For instance, if a procurement is deemed necessary for the protection and maintenance of external or internal security or public order, the FAPP itself stipulates the non-applicability of the FAPP.

This chapter focuses primarily on federal law, as the considerable number of different cantonal, and even municipal, regulations in Switzerland still in force at this point in time are beyond the scope of this chapter.

Year in review

During the past few years, the entire legislative framework has undergone revision to implement the GPA 2012. In addition to the implementation of the GPA 2012 in the FAPP, one of the main objectives of the revision was to harmonise the federal and cantonal procurement regulations. At federal level, the revised FAPP and OPP entered into force on 1 January 2021. The cantons also unanimously adopted the IAPP 2019, which largely contains the same rules as the revised FAPP and leaves the cantons little room for their own regulations. The IAPP 2019 entered into force on 1 July 2021 and must be enacted into cantonal law by cantonal governments, which has already been carried out in the vast majority of cantons.

In 2024, the FAPP was further amended to foster sustainable procurements on the level of federal procurements. Since 1 January 2025, the FAPP provides that contracting authorities have to include, where appropriate, technical specifications for the conservation of natural resources or the protection of the environment.

Regarding the right of appeal (see "Challenging awards" below), in the past three years case law has further clarified under which conditions contracts can be awarded and under which conditions such awards can be appealed. The courts have held that the negotiated procedure requires authorities to carefully assess whether there are potential competitors for the contract in question. In addition, potential competitors of the award-winning company have a right to appeal if they can allege that they would have been in a position to fulfil the contract. This new case law requires awarding authorities to evaluate carefully whether in individual cases the conditions for a negotiated procedure are fulfilled and to prepare respective documentation.

Scope of procurement regulation

Regulated authorities

The FAPP provides a list of the public authorities that are subject to the law. The list contains entities both with and without legal personality as well as also entities such as courts, federal prosecutors and parliamentary services. Appendix 1, Annex 1 of the GPA 2012 contains a list of awarding authorities; however, this list is not exhaustive and entities founded after the contract signing may also be subject to public procurement law. Contracting authorities in the water, energy, transport and telecommunications sectors are explicitly regulated. However, entities active in these sectors may be granted individual exemptions by the federal department.

Private entities are – under specific circumstances and for certain actions, especially when providing public services in the area of production, transport or distribution of electrical power – subject to public procurement law. They must meet the same legal requirements, in particular, if they act in place of contracting authorities for procurements.

Regulated contracts

The FAPP provides an explicit definition of "public contracts" as transactions by which a contracting authority subject to the law procures against payment products or services for the fulfilment of its (public) tasks. Accordingly, the public contract is characterised by its remuneration and the exchange of goods or services in return. It is not necessary for the consideration to consist of money; monetary benefits that are only indirectly exchanged are also covered.

Under Swiss law, the following contracts are generally subject to public procurement rules:

1. supply contracts (contracts for the supply of movable goods, in particular by purchase, lease, rent or hire);
2. service contracts (contracts for the rendering of services); and
3. works contracts (contracts for building and civil engineering work).

In addition, the FAPP provides a list of contracts not covered by the law. If, for example, a public authority acquires, rents or leases real estate, or enters into contracts regarding financial services, the FAPP does not apply. In addition, contracts to be concluded in certain sectors are excluded from the FAPP. Furthermore, the FAPP lays down thresholds (without value added tax) for contracts that can be awarded directly and without invitation to tender, which are as follows:

1. 150,000 Swiss francs for supply and service contracts; and
2. 300,000 Swiss francs for works contracts.

Pursuant to the FAPP, the Federal Council will periodically adjust these thresholds in accordance with international obligations.

With regard to the award of concessions, the FAPP stipulates that these are subject to procurement law if the tenderer thereby acquires exclusive or special rights that it exercises in the public interest and for which it receives remuneration or compensation directly or indirectly in return. However, specific legal provisions (eg, under the Waters Protection Act, the Electricity Supply Act or in telecommunications and broadcasting legislation) take precedence over this regulation.

If the contracting parties wish to vary a contract, in general, Swiss public procurement law assumes that the project described in the invitation to tender materially remains the same during the entire procurement process. No new procurement procedure is therefore necessary unless the amendment materially changes the scope of the contract or the amendments exceed the applicable threshold values. However, if the contracting parties wish to transfer the contract to a different supplier, a new procurement procedure is required (ie, the contract cannot be transferred to a different entity without conducting a new procurement procedure).

Follow-on procurements (ie, procurements to replace, complement or expand already provided services) can be awarded directly and without invitation to tender under certain conditions; for example, in cases where a change of the supplier would result in substantial additional costs.

Special contractual forms

Framework agreements and central purchasing

Framework agreements that do not aim at conclusively determining a certain volume of services to be put out to public procurement, but rather at determining the terms for the goods, work and services to be procured over a given period, are explicitly regulated by the FAPP.

In general, framework agreements are permissible provided that they are not used with the intention or effect of impeding or eliminating competition. However, the FAPP provides that, apart from exceptional circumstances, framework agreements may be contracted for a maximum duration of five years and may not be automatically renewed.

Joint ventures

Swiss public procurement legislation does not contain a clear definition of public–joint ventures. The FAPP provides, however, for specific rules in situations where a service is to be procured from an entity that is part of the procuring authority or controlled by the procuring authority, or that is itself subject to public procurement law.

If the contracting authority and the supplier belong to the same legal entity (ie, if the service is procured from a dependent organisational unit of the contracting authority and is thus procured in-house), the FAPP does not apply. In addition, the FAPP is not applicable if the contracting authority procures a service from an entity over which it exercises control. However, this exemption only applies if the controlled entity essentially provides its services for the contracting authority, which can be assumed if the entity provides at least 80% of the services in a given market for the procuring authority. Finally, the FAPP does not apply to contracts where the contracting authority intends to procure a service from a legally independent entity that is also subject to procurement law and does not provide its services in competition with private third parties. This exception also requires that no private third party holds shares in the entity.

Swiss public procurement legislation also does not provide special rules for public–private partnerships (PPPs). There is no clear definition of a PPP in Swiss procurement legislation. Generally, procurement procedures apply, as PPPs are viewed as ordinary procurements of supplies, services or works. However, the applicability of procurement laws to PPP projects must be examined case by case, depending on the specific characteristics of the procured service. According to case law, once a PPP partner has been selected by the contracting authority in accordance with the FAPP, it is no longer subject to procurement laws when subcontracting. Despite the recognition of this one-time procurement principle, the contracting authority must ensure that the selected partner obligates its subcontractors to comply with the compulsory regulations.

The bidding process

Notice

As far as regulated procurement contracts at the federal level are concerned, all calls for tender, as well as the awards of the contract, are published on Simap,[1] the government's public procurement information system platform.

Procedures

Swiss public procurement law provides four main methods of procurement. The contracting authority may award a regulated contract by means of an open procedure, a selective procedure, an invitation procedure or a negotiated procedure. The applicability of these procedures depends on the contracting authority, the type of contract and the threshold values set out in the FAPP.

Under the open procedure, all interested bidders may submit a tender. In the selective procedure, all interested bidders may submit an application to participate, but the contracting authority identifies bidders who may submit a tender based on their suitability. In the invitation procedure, the contracting authority determines at least three suppliers, if possible, who will be invited to submit a tender. As far as the procurement of weapons, ammunition or military materiel is concerned, the invitation procedure may always be used. Under the negotiated procedure, the contracting authority negotiates a contract directly with a supplier of its choice without issuing any invitation to submit a tender. In general, the applicability of the negotiated procedure depends on the thresholds set out in "Regulated contracts" above. However, under certain conditions specified in the FAPP, the contracting authority may apply the negotiated procedure even though the procurement exceeds the corresponding threshold value.

As far as electronic procurements are concerned, regulated procurement contracts at the federal level are advertised on the Simap electronic platform. Electronic submissions are standard practice within federal administration.

The FAPP also provides for electronic auctions and the electronic processing of award procedures. Flexible procurement instruments such as the dialogue (competitive dialogue) are likely to be increasingly important in the future, especially in the awarding of intellectual services. Practical experience will show the extent to which these new instruments will be used and whether further need for modification of the provisions will result.

Amending bids

Modification to tender documents is limited and amendments are possible in the event that formal negotiations take place. However, bidders may submit alternative tenders in addition to their main offer, provided that such alternatives have not been excluded in the tender documents.

See also "Regulated contracts" above regarding options for the contracting parties to vary a contract or transfer the contract to a different supplier.

Eligibility

Qualification to bid

The FAPP contains an exhaustive list of situations in which a bidder might be excluded from a specific tender or from future public contracts, in general for a period of up to five years; for instance, if it has violated anti-corruption provisions or has been found guilty of a felony in a legally enforceable judgment. Details of excluded bidders, as well as the reasons for and the length of their exclusions, are kept on non-public lists.

As mentioned in "Procedures" above, the qualification to bid may also depend on the procurement procedure applicable to the tender. Only the selective procedure provides for a selection or shortlisting of the bidders that fulfil the qualification criteria established by the contracting authority. These criteria may concern the bidders' financial, economic and technical capacity. To meet the principle of transparency, the criteria are published in the invitation to tender or tender documents. The contracting authority can reduce the number of tenderers if the tender could not otherwise be processed in an efficient way. However, even when limiting the number of participants, the contracting authority must guarantee an effective competition between the bidders.

In addition, in certain cases, the contracting authority may restrict or exclude the option for consortia to participate in the invitation to tender.

Conflicts of interest

The FAPP provides that the contracting authority must take measures to prevent conflicts of interest. It further provides a list of situations in which an individual acting on the contracting authority's behalf must recuse themselves.

The OPP stipulates that the employees of a contracting authority (as well as third parties commissioned by the contracting authority who are involved in an award procedure) are obliged to disclose any secondary employment, contractual relationships and vested interests that could lead to a conflict of interest in the award procedure, and to sign a declaration of impartiality. Moreover, the contracting authority must regularly instruct its employees who participate in award procedures on how to effectively prevent conflicts of interest and corruption. General principles of constitutional and administrative law, according to which members of the administration must recuse themselves if they have a personal interest or could be regarded as lacking impartiality, also apply to public procurements. The IAPP provides for persons concerned to recuse themselves if certain conditions are met but does not specify these conditions. The IAPP 2019, which entered into force on 1 July 2021, contains dispositions almost identical to those in the FAPP.

Foreign suppliers

Foreign suppliers coming from countries to which Switzerland has undertaken to grant market access on a contractual basis can participate in Swiss public procurement, provided that the countries concerned have given the same commitment to Switzerland. Even in the case of public contracts outside the scope of international treaties (listed in an annex to the FAPP), pursuant to the FAPP, foreign suppliers, can participate in Swiss public procurement procedures if their countries of origin grant reciprocal rights or if the

contracting authority allows it. The Federal Council must update its list of countries that grant reciprocal rights. Pursuant to the Ordinance on Public Procurement, this list is kept by the State Secretariat for Economic Affairs and is available on the Simap platform.

Although Switzerland is not an EU member state, it has concluded a set of bilateral agreements with the European Union (and the EFTA), notably the EU–CH AAGP. EU or EFTA companies have the right to participate in tenders in Switzerland and to second the necessary personnel to Switzerland.

Foreign companies must, however, apply for work permits for their seconded personnel in accordance with the applicable Swiss legislation. They must therefore comply with the requirements on social and working conditions applicable to the location of the awarded contract.

Award

Evaluating tenders

The FAPP provides that the contract must be awarded to the most advantageous offer. Tenders must therefore be evaluated using performance-related award criteria, such as the price and quality, appropriateness, time frames, technical value, economic efficiency, life cycle costs, aesthetics, sustainable development, plausibility of the tender, the different price levels in the countries where the supply is provided, reliability of the price, creativity, customer service, delivery conditions, infrastructure, innovation content, functionality, service readiness, and the expertise or efficiency of the methodology. The extent to which the tenderer provides apprenticeship places, jobs for older employees or jobs to reintegrate long-term unemployed people may additionally be taken into account outside the scope of international agreements.

The contracting authority must indicate the award criteria and their weighting in the invitation to tender or in the tender documentation. The weighting may be omitted if the procurement concerns solutions, possible solutions or procedures. Contracts for standard services may also be awarded solely based on the lowest price, provided that the technical specifications for the goods, work or services guarantee high sustainability standards in social, environmental and economic terms.

The FAPP provides an obligation for the contracting authority to request further information from bidders that file an abnormally low tender and enables the contracting authority to exclude such bidders if they cannot respond adequately to the authority's request.

National interest and public policy considerations

The GPA 2012 lays down the principle that authorities are required to act in a non-discriminatory manner. National legislation shall not limit the market (ie, encourage national or local companies, or discriminate against foreign bidders).

The procurement may take into account social or environmental criteria, but these must have a relevance to the market in which the contract is awarded. Thus, to avoid discriminating against foreign companies, one must always ensure that such criteria are objectively necessary for the underlying market.

Furthermore, there are sectors that may be granted individual exemptions from tender procedures. These exemptions are exhaustively listed in the FAPP.

Information flow

Invitations to tender must be published on the government's Simap platform. Tender documents containing all information relevant for a company to decide whether to participate in the tender procedure and to prepare its bid must also be available.

The contracting authority may set a date in the tender documents after which no questions will be answered by the contracting authority with respect to the tender documents. Awards must be published on Simap. Furthermore, the contracting authority must communicate its decision to the bidders and include a reasoned summary of its decision. The contracting authority may conduct a debriefing with an unsuccessful bidder upon request.

In addition, an unsuccessful bidder has the right to request the contracting authority to provide the following information on the award procedure:

1. the type of tendering procedure used;
2. the name of the successful tenderer;
3. the value of the successful tender or the value of the highest and lowest tender taken into account in the tendering procedure;
4. the main reasons for the rejection of their tender; and
5. the characteristics and decisive advantages of the successful tender.

However, the awarding authority must not provide this information to unsuccessful bidders if disclosing such information would result in a violation of federal law, be against public interest, prejudice the legitimate commercial interests of the bidders or interfere with fair competition among bidders.

The contracting authority may provide this information in a written statement or invite the unsuccessful bidders for an oral debriefing, which is often the case in practice. Furthermore, other decisions listed in article 48 of the FAPP – such as the interruption of an award procedure, the choice of participants in the selective procedure or the exclusion of a bidder – must also be communicated to the bidders with summary reasons or be published. During an appeal procedure, the appellant may, on request, consult the documents relating to the evaluation of the appellant's offer and the other documents of the procedure that are relevant to the decision, unless there is an overriding public or private interest that precludes this.

Challenging awards

Procedures

Under the FAPP, an appeal against a decision of the contracting authority is possible if the following conditions are met:

1. in the case of supplies of goods or services, when the contract value exceeds the applicable threshold for the invitation procedure;
2. in the case of construction work, when the contract value exceeds the applicable threshold for the open or selective procedure; and
3. when the decision relates to bids that are not covered by international treaties on public procurement and violate federal law.

Furthermore, the FAPP defines several (final and interim) decisions that can be independently contested by way of appeal. This non-exhaustive list includes:

1. the award of contract or discontinuation of the award procedure;
2. the invitation to tender for the contract;
3. the decision on the selection of participants in the selective procedure; and
4. exclusions from the tender.

Appeals against these decisions must be brought forward immediately. Their unlawfulness cannot be pleaded at a later point in the procedure.

Appeals against decisions issued by a contracting authority subject to the FAPP may be submitted to the Federal Administrative Court if filed within 20 days of the notification of the decision. If the decision is published on the Simap platform before the tenderers are personally informed about the outcome of the procedure, the date of publication thereon will be relevant for the limitation period.

In addition, in the federal public procurement procedure, suspensive effect must be requested by the appellant. If suspensive effect is not granted or not requested by the appellant, the contracting authority can conclude the contract with the successful bidder.

Appeals against decisions of cantonal or local procurement authorities may generally be submitted to the cantonal public law court within generally 20 days of the date of publication of the decision (shorter appeal deadlines exist).

At cantonal level, there exists a standstill clause under which the contract may not be concluded before the expiry of the time limit for appeals against the award decision. Furthermore, the IAPP 2019 stipulates that, under the revised cantonal procurement laws, appeals against decisions of cantonal or local procurement authorities may generally be submitted to the cantonal public law court within 20 days of the date of publication of the decision.

Decisions of the Federal Administrative Court or the cantonal public court can generally be appealed to the Federal Supreme Court within 30 days of the notification of the judgment of the Federal Administrative Court or the cantonal public court, although the Federal Supreme Court's power to review a decision may be very restricted, depending on whether the thresholds are reached.

Grounds for challenge

The appellant may plead any violation of substantive or procedural law, including excess or abuse of discretional power. The appeal court will review the legality of contested decisions but not their appropriateness. The contracting authority has a great deal of discretion when making decisions and the judge may only review the contracting authority's evaluation of the tenderer's bid in light of the awarding criteria. The grounds may also relate to an incorrect factual situation. In practice, the judge's control in cases of this kind is limited to making a finding of arbitrariness.

An ordinary appeal to the Federal Supreme Court is limited to the ground of federal law violation and manifestly wrong factual assessment established in violation of the law. In the particular case of a subsidiary constitutional appeal, only those constitutional rights of which the unsuccessful bidder is the holder may be invoked.

Furthermore, according to the Federal Act on Administrative Procedure of 20 December 1968, an appeal against other separately notified interim orders is permitted if they may cause a non-redressable prejudice or granting the appeal would immediately bring a final decision and would therefore obviate significant expenditure in time or money in prolonged evidentiary proceedings.

Remedies

A distinction ought to be made between the situation in which the unsuccessful tenderer appeals after the award but before the contract is signed with the successful tenderer and the situation in which the unsuccessful tenderer appeals after the contract has been concluded.

In the first case, the possibility to request suspensive effect to prevent the conclusion of the contract remains and, if granted, the unlawful award can be annulled or reformed by the appeal court.

In the second case, the appeal court can only determine the extent to which the contested procurement is in breach of federal (or cantonal) law. Under the FAPP, the appeal court may award damages, within the contested procurement procedure, in connection with expenses incurred by the bidder in preparing the procurement and the appeal procedures for the appellant.

Regarding remedies outside the legislation, the doctrine is divided on whether the remedies provided by the FAPP are conclusive or whether civil claims based on *culpa in contrahendo* are possible. As an informal remedy, a complaint to the supervisory authority of the contracting authority can be made.

Special considerations

Among the various award procedures under Swiss public procurement law, the negotiated procedure (see "Procedures" above), which allows the direct award of contracts, is particularly legally sensitive, making it essential for practitioners to understand its precise scope and the stringent conditions governing its use. Unlike other award procedures, the direct award dispenses with competitive bidding altogether.

As a regular procedure, the direct award is available only for contracts below certain statutory thresholds. In addition, the FAPP and the IAPP provide an exhaustive list of exceptional grounds permitting a direct award irrespective of the contract value. These exceptions are interpreted very narrowly by the courts. They include, most notably, situations where only one supplier qualifies on account of technical or artistic particularities or intellectual property protection and no adequate alternative exists.

Case law at the federal level has held that the burden of proof for both the existence of technical uniqueness and the absence of adequate alternatives lies with the contracting authority, requiring a thorough, documented market analysis rather than placing the onus on competing suppliers to demonstrate equivalence. This principle was recently confirmed at the cantonal level, where it was emphasised that contracting authorities must proactively investigate market alternatives through concrete measures.

Outlook and conclusions

Following the revision of the GPA, the GPA 2012 improved transparency and market access, and was ratified by the Federal Assembly on 21 June 2019.

The revised FAPP and OPP entered into force on 1 January 2021. At an extraordinary plenary meeting on 15 November 2019, the cantons also unanimously adopted the IAPP 2019, which largely contains the same rules as the revised FAPP and leaves the cantons little room for their own regulations. The IAPP 2019 has not yet come into force in the following four cantons: Appenzell Ausserrhoden, Geneva, Obwald and Ticino. Although three of these cantons (Appenzell Ausserrhoden, Geneva and Obwald) are currently in the process of ratifying the IAPP 2019, Ticino has not yet initiated its accession. In all four cantons the old IAPP 1994/2001 continues to apply until the IAPP 2019 enters into force.

Following the latest revisions, procurement legislation has undergone important changes, and therefore further changes are not to be expected in the near future. In the medium term, the new EU regulations currently being negotiated are likely to influence the debate in Switzerland, particularly in the areas of cybersecurity and supply chain resilience for critical infrastructures.

Endnotes

1 Available at www.simap.ch. ^ Back to section



Astrid Waser astrid.waser@lenzstaehelin.com
Benoît Merkt benoit.merkt@lenzstaehelin.com

Lenz & Staehelin

Read more from this firm on Lexology