

# DOING BUSINESS IN THE SWEDISH DEFENCE SECTOR

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## 1. INTRODUCTION

The Swedish Armed Forces (Sw: *Försvarsmakten*) is an authority organised under the Ministry of Defence. Its main responsibility is to hold the capacity to engage in armed combat in order to defend Sweden against armed attacks, guard Swedish territory and provide societal support. Furthermore, the Swedish Armed Forces continuously participates in international peacekeeping and peace-making missions around the world. The Swedish defence sector also consists of several other authorities, such as the Swedish Fortifications Agency, the National Defence Radio Establishment and the Swedish Defence Conscription and Assessment Agency.

In the past couple of years, events have required the Swedish defence sector, in particular the Swedish Armed Forces, to increase its overall capacity. As a result, the Swedish defence sector has become more interesting from a public procurement perspective, as an increased capacity naturally follows an increased purchase demand for both products and services.

The purpose of this booklet is to address the increasing purchase demand and to introduce oversea companies, both within the EU and outside the EU, to public procurement within the defence sector in Sweden.

## 2. PUBLIC PROCUREMENT BY THE SWEDISH ARMED FORCES

### 2.1 Swedish Defence Materiel Administration

The Swedish Defence Materiel Administration (Sw: *Försvarets materielverk*, "FMV") is a civilian governmental agency acting under the Ministry of Defence. FMV is responsible for public procurements for delivering material and services to the Swedish Armed Forces, that the Swedish Armed Forces are not procuring themselves.

FMV is responsible for carrying out public procurements for example the following:

- › Defence equipment
- › Manufacturing
- › Studies of different kinds
- › Monitoring
- › Investigations
- › Qualified consultancy service
- › Project planning
- › Framework agreements with suppliers to the Swedish Armed Forces and other authorities.
- › Construction

### 2.2 Public Procurement by the Swedish Armed Forces

From 1<sup>st</sup> January 2019, the Swedish Armed Forces is responsible for the procurement of goods, services and constructions that are:

- › required in order to uphold, operate and maintain the Swedish Armed Forces' equipment;
- › necessary for carrying out activities within storage, service and workshops;
- › of particular importance for Sweden's security and which are to be used by the Swedish Armed Forces units that conduct operations that require qualified security protection; or
- › otherwise related to procurement within the Swedish Armed Forces' activities.<sup>1</sup>

However, FMV provides assistance to the Swedish Armed Forces with, amongst others things, competence in the fields of maintenance and procurement.<sup>2</sup> Besides its assisting function, FMV is responsible for all procurements outside the scope of the Swedish Armed Forces' responsibility.<sup>3</sup> This means that FMV will procure goods, services and constructions for development, acquisitions and modifications of materiel systems in accordance with the Swedish Armed Forces' investment plan.

### 2.3 Budget for the Swedish Defence Sector – today and the predicted future

As the below figure shows, there has been a steady budget increase for the Swedish Defence Sector over the past fifteen years.

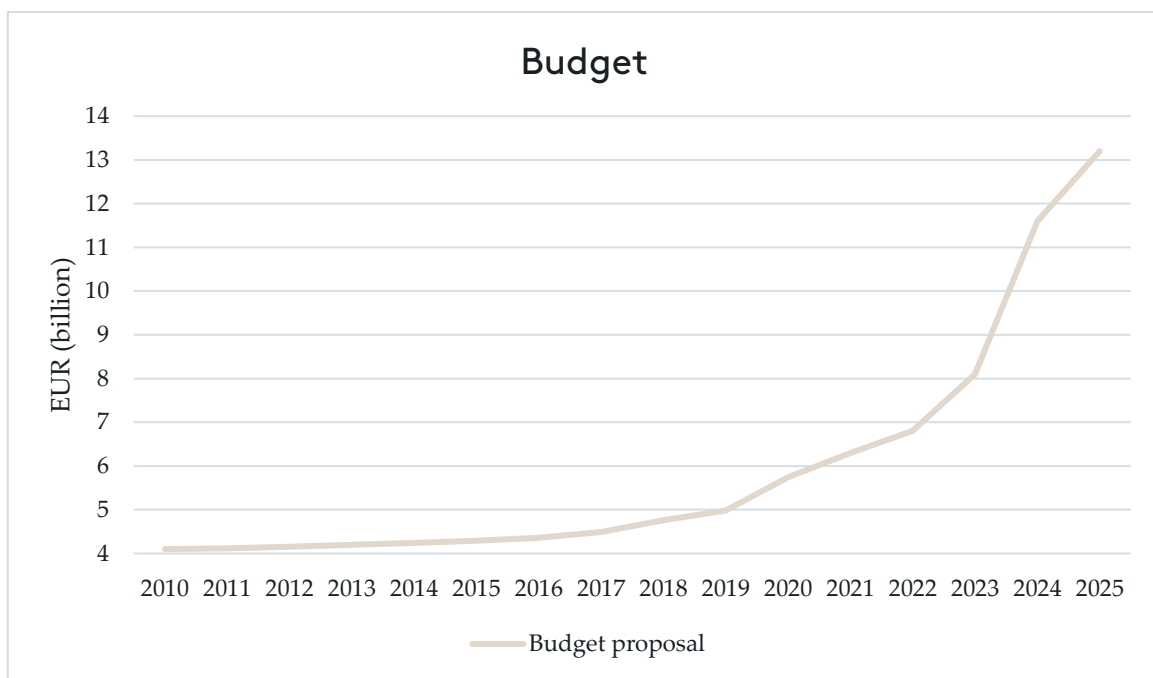


Figure 1. Budget diagram for 2010-2025 as of exchange rates in March 2025.<sup>4</sup>

<sup>1</sup> Section 11 a), Regulation (2007:1266) with instructions to the Swedish Armed Forces (Sw: *Förordning (2007:1266) med instruktion för Försvarsmakten*).

<sup>2</sup> Section 1 paragraph 3, Regulation (2007:854) with instructions to the Swedish Defence Materiel Administration (Sw: *Förordning (2007:854) med instruktion för Försvarets materielverk*).

<sup>3</sup> Section 1 paragraph 1 Regulation (2007:854) with instructions to the Swedish Defence Materiel Administration (Sw: *Förordning (2007:854) med instruktion för Försvarets materielverk*).

<sup>4</sup> The numbers in the chart are taken from the development of expenses for the Swedish defence sector in the yearly budget requests (Sw: *Utgiftsutveckling för området "Försvaret" i budgetpropositionerna*).

The preliminary budget for 2025 indicates that the budget for the Swedish Armed Forces will continue to increase in the coming years. The budget request for 2026 is under revision with an anticipated goal of 13,4 billion EUR.<sup>5</sup> In addition, the Swedish Armed Forces has anticipated a steep, further increase in its budget, with the goal of receiving just over 23 billion EUR by 2030 and reaching 3,5 percent of BNP, as suggested in the spring budget proposal of 2025.

There are several reasons behind the forecasted continued budget increase, the main reason being that the security situation is deteriorating around the world, characterised by unpredictability, complexity and a rapid course of events, resulting in a rearmament and further development of the Swedish Armed Forces both in order to defend Sweden and to contribute to peace and security throughout the region.<sup>6</sup> According to the Swedish Armed Forces' study from 2022, the Swedish defence sector's capabilities and goals need to be set higher than the government's stated planning framework due to the uncertain development of the security situation in the world.<sup>7</sup> The need for high aims was confirmed by the Swedish Defence Commission in a report, which identified increasing threats both geographically and technically as a consequence of the destabilisation in the neighbouring regions and society in general becoming increasingly more dependent on technical solutions.<sup>8</sup> The view is also confirmed by the Russian full-scale invasion of Ukraine in the spring of 2022.

Another aspect that indicates that the budget will increase is Sweden's NATO membership. As a NATO member, Sweden is expected to spend a minimum of 2 per cent of GDP on defence investments. A percentage that is anticipated to increase to 3-4 per cent of GDP. As a result of the strengthening of defence appropriations, Sweden met the target of defence spending of 2 per cent of GDP already in 2024.<sup>9</sup>

## 2.4 Trending rearmament within the Swedish Armed Forces

As displayed in the above figures, the budget for the Swedish Armed Forces is, and has been, on a steady increase. A contributing reason behind the increase is the trending rearmament within the Swedish Armed Forces. Below are a few examples of Swedish Armed Forces' rearmament.

Firstly, Sweden as a NATO member will affect the development of the defence sector. In connection with NATO's meeting of defence ministers in Brussels on 14-15 February 2023, Sweden was assigned interim capability goals.<sup>10</sup> The interim capability goals contain both quantitative goals regarding the number of combat units and qualitative goals regarding the capabilities that the combat units should have. The new direction includes a significant increase regarding the goals for the Alliance member states and a greater need for capabilities to replenish forces in accordance with the regional plans.

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<sup>5</sup> Proposition 2024/25:1, Budget request, Area of Expenditure 6 (Sw: *Budgetproposition, Utgiftsområde 6*), page 8, (only in Swedish).

<sup>6</sup> See the Swedish Commander in Chief's military advice to the Swedish government for 2024, FM2023-23092:14, Appendix 2, page 4, (only in Swedish).

<sup>7</sup> Slutredovisning av Försvarsmaktens perspektivstudie 2019-2022, pages 7-8, (only in Swedish).

<sup>8</sup> See the latest final report on the direction of the development of military defence, Ds 2019:8, *Värnkraft - Inriktningen av säkerhetspolitiken och utformningen av det militära försvaret 2021-2025*, pages 41-42, (only in Swedish). The conclusions in the report was confirmed in the latest partial report including inter alia the development of the military defence, Ds 2023:12, *Kontrollstation*, pages 22-23, (only in Swedish).

<sup>9</sup> Proposition 2024/23:1, page 8, (only in Swedish).

<sup>10</sup> Special Nato Defence Planning Capability Review 2023 and Nato Interim Capability Targets 2023 for Finland and Sweden, FM2022-19460:14, 2023-03-16.

Sweden's future capability goals are thus deemed to aim higher than before and contain a clearer link to the regional plans, which will affect the future planning of the Swedish defence.<sup>11</sup>

Secondly, the support to Ukraine has also affected the Swedish military development. Procurement of materials and supplies such as increased stock levels of contingency goods has been accelerated. In total, more procurement production has been carried out compared to previous years. Material procurement has also been affected by the government's decision on significant financial contributions and increased order authorisations in 2022, as well as support for Ukraine.<sup>12</sup>

A third example of the Swedish Armed Forces' rearmament is the request for personnel reinforcements. During 2024, more than seven thousand eighteen year old men and women went into the defence forces.<sup>13</sup> The number of people conscripted each year will vary depending on the Swedish Armed Forces' needs, but the Swedish Armed Forces predict that the necessary volume for training new recruits will increase the coming years.<sup>14</sup> The Swedish Chief Commander proposes that the basic training volumes will increase to ten thousand individuals per year as early as 2030, compared to the six thousand three hundred individuals in 2023.<sup>15</sup>

## 2.5 Purchase Needs 2025-2030

### 2.5.1 Swedish Armed Forces' needs

The Swedish Armed Forces has several purchase needs as a consequence of the Russian invasion of Ukraine and the joining of NATO. The purchase needs are not only supposed to enable support to Ukraine, but to also strengthen the Swedish total defence.<sup>16</sup> The following are examples of purchase needs from the Swedish Armed Forces:<sup>17</sup>

- › Air defence for brigades and battle groups
- › Anti-aircraft missiles
- › Reconnaissance radars
- › Battle management systems
- › Fire arms
- › Trucks
- › Personal equipment for military personnel.
- › UAS
- › Ammunition
- › Military communications and command systems
- › Counter UAS

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<sup>11</sup> The Swedish Armed Forces budget request for 2025, FM2023-24770:10, page 7, (only in Swedish).

<sup>12</sup> Proposition 2024/25:1, page 66, (only in Swedish).

<sup>13</sup> The Swedish Defence Conscription and Assessment Agency's Annual Report from 2024, p. 2. (<https://www.pliktverket.se/download/18.7a54f188194d866594e5f510/1740401806865/Plikt-%20och%20pr%C3%B6vningsverkets%20%C3%A5rsredovisning%202024.pdf>) (only in Swedish).

<sup>14</sup> See Slutredovisning av Försvarsmaktens perspektivstudie 2016-2018, appendix 1, page 78, (only in Swedish), where the Swedish Armed Forces in 2018 predicted an increased demand to about ten thousand recruits by 2025.

<sup>15</sup> See the Swedish Commander in Chief's military advice to the Swedish government for 2024, FM2023-23092:14, Appendix 2, page 32, (only in Swedish).

<sup>16</sup> FM2024-21129:5, page 13.

<sup>17</sup> FM2024-21129:5, pages 14-15.

## 2.6 The organisation of the Swedish Civil Defence

In the latest partial report for the development of the total defence, the Swedish Defence Commission proposes that the strengthening of the civil defence should increase dramatically.<sup>18</sup> Historically, the Swedish civil defence has been almost completely disassembled and the new organisation of the Swedish civil defence is therefore starting from a very low level.<sup>19</sup>

The Swedish Defence Commission states that the civil defence must develop a higher overall total defence capability in the near future. The pace of preparation, readiness and capability within the entire total defence, both military and civil defence, must therefore be increased as a matter of urgency. The Swedish Defence Committee believes that this insight needs to penetrate all parts of society and be the main driving force for the development of total defence capability in the coming years.<sup>20</sup>

The budget request for civil defence and societal emergency preparedness is just under 785 million EUR for 2025.<sup>21</sup>

## 3. LEGAL FRAMEWORK FOR PROCUREMENT OF DEFENCE AND SECURITY

### 3.1 General Introduction to Relevant Regulations

#### 3.1.1 Public Procurement Act

There are several different regulations regarding public procurement in Sweden, which in the field of defence and security are primarily constituted of the Swedish implementations of EU Directives 2014/24/EU and 2009/81/EC.

Sweden has implemented Directive 2014/24/EU through the Public Procurement Act (Sw: *lag (2016:1145) om offentlig upphandling, "LOU"*). LOU is applicable when contracting authorities procure supplies, services or works through contract awards, as well as when a contracting authority organises a design contest.

Procurements in accordance with LOU can be carried out in several different ways. LOU is in this respect the broadest procurement regulation. Depending on whether the awarded contract is below or above the so-called threshold values<sup>22</sup>, different rules apply.<sup>23</sup> Furthermore, the threshold values are adjusted every other year and differs depending on whether the contracting authority is a central government authority or municipal authority and whether the procurement concerns goods, services

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<sup>18</sup> The Swedish Defence Commission's partial report for the direction of the total defence and organisation of the civil defence, Ds 2023:24, *Kraftsamling*, (only in Swedish).

<sup>19</sup> SOU 2021:25, *Structure for increased resilience*, (Sw: *Struktur för ökad motståndskraft*), page 25, (only in Swedish).

<sup>20</sup> Ds 2023:24, *Kraftsamling*, page 17.

<sup>21</sup> Prop. 2024/25:1, *Budget request, Area of Expenditure 6* (Sw: *Budgetproposition, Utgiftsområde 6*), page 8, (only in Swedish).

<sup>22</sup> The threshold values are decided by the European Commission and harmonised within the EU. Procurements with a contract value exceeding the threshold values are presumed to have a cross-border interest, and therefore EU procurement law is applicable to such procurements. This means that for procurements of lower value national rules apply (although the principles of EU law still need to be considered by the contracting authority).

<sup>23</sup> NB! Social and other specific services are subject to lighter regulations and are not addressed in this booklet.

or works. For reference, the threshold values for procurements carried out by a central government authority is approximately 143 000 EUR for goods and services and 5 538 000 EUR for works.<sup>24</sup>

A procurement above the threshold values may be carried out as an open procedure, restricted procedure, negotiated procedure with/without prior publication of a notice, competitive dialogue or innovation partnership. A contracting authority is always allowed to carry out a procurement as an open or restricted procedure, while remaining procedures may only be used under certain conditions.

Contracting authorities are free to form the procedure of a procurement below the threshold values as they find appropriate. However, the basic principles of EU law always apply.

In an open procedure, any interested supplier is welcome to submit a tender. The contracting authority conducts a qualification of the suppliers and subsequently evaluates each of the tenders. The contract is awarded to the qualified tenderer having submitted the economically most advantageous tender, based on the requirements set out in the call for competition. In a restricted procedure, the suppliers have to submit an application to participate in the procurement. The contracting authority then invites selected suppliers that meet the requirements to submit tenders. Similarly to open procedures, the contract is awarded to the qualified tenderer having submitted the economically most advantageous tender. The negotiated procedure allows, in contrast to the aforementioned procedures, negotiations between the contracting authority and the tenderer(s).

### 3.1.2 Procurement of Defence and Security Act

Sweden has implemented Directive 2009/81/EC through the Procurement of Defence and Security Act (Sw: *lag (2011:1029) om upphandling av försvars- och säkerhetsområdet, "LUFSS"*).

LUFSS is applicable to procurements within the areas of defence and security, i.e. procurements of military equipment, sensitive equipment, construction works, products and services of such equipment and services that are particularly intended for military purposes or otherwise are sensitive.<sup>25</sup>

Military equipment means equipment specifically designed or adapted for military purposes and intended for use as an arm, munitions or war material. Sensitive equipment means equipment, works and services for security purposes, involving, requiring and/or containing classified information. These broad definitions and area of application mean that LUFSS will be applicable for several procurements within the Swedish defence sector.

There are, however, a number of exemptions from the provisions of LUF, some of which concern procurement of munitions and defence equipment or matters of national security.

For example, in certain cases regarding procurement relating to the manufacture of or trade in weapons, ammunition and war material covered by Article 346(1)(b) of the Treaty of the Functioning of the European Union (TFEU), the Government may decide in individual cases on exemptions from the provisions of the LUFSS that are necessary with regard to Sweden's essential security interests. In

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<sup>24</sup> As of the threshold values in March 2024.

<sup>25</sup> Certain services, so called Annex B-services, are subject to a lighter regulation and are not addressed in this booklet.

such cases, the Swedish Armed Forces and the Swedish Defence Materiel Administration may also decide on such exemptions if the procurement concerns an addition to a procurement where the Government has previously decided on an exemption, concerns goods, services or construction contracts within the framework of an international agreement concluded by Sweden on inter-governmental cooperation in matters of supply of goods, services or construction contracts, or has a value that is not more than 200,000,000 SEK. The Swedish Defence Radio Administration may decide on such exemptions if the value of the procurement is not more than 5,000,000 SEK. For such exempt contracts, LUFSS does not apply. Instead, contracts may be awarded outside the procedures of Swedish procurement legislation.

For contracts covered by the provisions of LUFSS, however, LUFSS also has threshold values, like LOU, which are also adjusted every other year. The threshold values for procurements carried out under LUFSS are 443 000 EUR for goods and services and 5 538 000 EUR for works.<sup>26</sup>

Procurements above the threshold values can either be carried out as restricted procedures or negotiated procedures with prior publication of a notice. Furthermore, a competitive dialogue may be used if the contract is particularly complicated (e.g. the obligations or functional requirements necessary to fulfil the contracting authority's needs cannot reasonably be defined) and where neither a restricted nor a negotiated procedure would allow a contract award. Additionally, a negotiated procedure without prior publication of a notice may under certain circumstances be used, such as in the event of an emergency arising from a crisis, war or other armed conflict or, in some cases, procuring air or maritime transport by the EU member states' armed forces or security forces.

Regarding procurements below the threshold values, contracting authorities are free to form the procedure as they find appropriate. However, the basic principles of EU law always apply.

In LUFSS there are specific provisions regarding the content of the technical specifications, including security of supply and information security. The contracting authority may impose requirements on the security of supply and/or delivery for important products during both peace and under more challenging conditions. It also ought to be noted that framework agreements procured in accordance with LUFSS may, as a main rule, have a maximum contract period of seven years, compared to only four years according to the main rule in LOU.

### **3.2 Other Relevant Legislation**

In the above sections, the procurement procedures in accordance with two of the most central procurement regulations have been briefly described. However, other legislation may be relevant for tenderers when participating in procurements within the Swedish defence sector.

An important example is the Protective Security Act (Sw: *säkerhetsskyddslag* (2018:585)). The Protective Security Act is often applicable in procurements where LOU or LUFSS is applicable. The purpose of the Protective Security Act is to protect Sweden against espionage, sabotage, terrorist offences as well as other offences, and protection in other cases of classified information through preventive measures. The Protective Security Act applies to anyone who conducts activities that are of importance for Sweden's security or activities that are covered by an international commitment on

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<sup>26</sup> As of the threshold values in March 2024.



security protection (i.e. security-sensitive activities) obliging Sweden. The Protective Security Act applies to public as well as private businesses. A fundamental principle of the act is that the level of protection shall be the same regardless of the business in which it occurs.<sup>27</sup>

The Protective Security Act is applicable to classified information, i.e. information related to security-sensitive activities and which is therefore subject to confidentiality according to the Public Access and Secrecy Act (Sw: *offentlighets- och sekretesslag (2009: 400)*, “OSL”) or which would have been subject to confidentiality in accordance with OSL, if it had been applicable. In other words, for public authorities, which are subject to OSL, the decisive issue is whether OSL prescribes confidentiality for the information in question. For private organisations, which are not usually covered by OSL, a hypothetical test must be carried out, i.e. whether the information in question would have been covered by confidentiality according to OSL, if OSL had been applicable. Which type of business, or part of the business, that carries out a security-sensitive activity needs to be determined through an assessment on a case by case basis.<sup>28</sup>

The fact that the Protective Security Act is applicable in a procurement must not be confused with the application of LUFS (as described above in section 3.1.2). In order for LUFS to be applicable, the procurement needs to entail both classified information and have a specific security purpose (see above section 3.1.2). This means that the fact that the Protective Security Act is applicable does not automatically mean that LUFS becomes applicable in the procurement. However, when LUFS is applicable, the Protective Security Act is in most cases also applicable.<sup>29</sup>

Apart from procurement regulations, there are several other legal areas that need to be considered when participating in procurements within the Swedish defence sector. Relevant areas to be considered include, but are not limited to, general contractual law, information security and data protection, intellectual property rights (especially patents and trade secrets) as well as confidentiality issues in general.

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<sup>27</sup> Proposition 2017/18:89, page 35 cont., (only in Swedish).

<sup>28</sup> Op. cit., page 42.

<sup>29</sup> Lindberg, Olle & Pedersen, Kristian; Upphandlingens grunder, uppl. 6, 2023, page 230 cont., (only in Swedish).

## PARTICIPATING IN PUBLIC PROCUREMENTS

Below are a few pointers for suppliers to keep in mind before, during and after participating in public procurements in Sweden.

### A. Notices About Procurements and Subscription Services

All procurements above the threshold values in the EU shall be published in the online version of the Supplement to the Official Journal of the EU, Tenders Electronic Daily ("TED"). Basic information is published in the twenty-four official EU languages. However, the full procurement notice only needs to be published in one official EU language. The Swedish procurements published in TED is administrated by private database providers approved by the Publications Office of the EU. Examples of such providers are Kommers Annons, eAvrop and Mercell.

The private database providers offer, in contrast to TED, subscription services to procurement notices. This means that suppliers have the possibility to subscribe to procurements within a certain sector or from a specific contracting authority. The Swedish Armed Forces publish their procurements in eAvrop and, when obliged to do so, TED. FMV publish their procurements in Kommers Annons and, when obligated to do so, TED.

### B. Procurement Rules and Procedures

In the above sections 3.1.1 and 3.1.2, the different types of procurement procedures for procurements carried out in accordance with LOU or LUFs have been described. The type of procurement procedure decides which rules will apply and how the procurement will be carried out. It is therefore important to remember which procedure is applicable to the procurement in question, as well as whether the procurement is being carried out under LOU or LUFs.

How the contracting authority will carry out the procurement in question, in addition to the applicable rules for the chosen procedure as set out in the procurement legislation, will be described in the procurement documents.

Furthermore, it is important to consider and keep in mind which other rules that are applicable, e.g. the Protective Security Act (see section 3.2 above), EU's General Data Protection Regulation 2016/679.

Which legislation, besides the procurement laws, that is applicable may have an effect on both the procurement, the tender and/or the performance of the contract.

### C. Submitting a Tender

The rules on submitting tenders are strict and formalistic. Tenderers have an almost non-existing chance to correct errors in their tenders.

When submitting a tender, please remember to pay attention to the following:

- The deadline for submitting the tender is arguably the most important date to remember – tenders submitted after the deadline will be rejected.
- Which language the tender may be submitted in. The most common is that the tenders, including attached documentation, need to be in Swedish. However, in some cases tenders may be allowed to be submitted in English.
- Which base for award of contract is being used and, perhaps even more importantly, the award criteria. The tenderer having submitted the tender that best fulfils the award criteria will be awarded the contract.
- All tenderers have the possibility of asking the contracting authority questions about the procurement prior to submitting the tenders. The contracting authority will provide a deadline for when questions may be submitted in order to have time to answer them. Questions and answers will be made available to all tenderers and will become a part of the procurement documents.
- Before submitting a tender, remember to double check that all of the mandatory requirements in the procurement have been met, including submitting all the required documentation. If not all of the requirements are met, the tender will be rejected. Historically, the Swedish administrative courts have taken a strict approach regarding this principle.
- If you wish that information in the tender should be kept confidential, remember to request confidentiality, specifying which information the request regards and which risks of harm that the disclosure would entail. Information provided in the procurement is, as a general rule, confidential until the award decision. Thereafter the tenders and other documents will be publicly available. However, information can remain confidential i) if it can be assumed that disclosure of the information would cause the contracting authority harm, or ii) if there are specific reasons to assume that the tenderer will suffer harm if information about its business or operational circumstances are disclosed.

#### D. Contract Award Decisions

- The contract award decision will be announced to all tenderers in writing, including information about the reasons for the decision as well as information about the standstill period during which the contract cannot be concluded.
- As a main rule, the contracting authority may enter into a contract with the tenderer awarded the contract after a standstill period of ten days from the notification of the decision.
- After the standstill period, the contracting authority may enter into a contract with the winning tenderer (unless the decision is subject to an application for review, which is not uncommon, see below section E).
- It ought to be noted that the contracting authority is also obliged to provide written information to the tenderers if a decision to cancel a procurement after a call for competition or a decision to recommence a procurement has been made, including an explanation as to why such decision was made.

## E. Legal Measures

- Under certain circumstances, tenderers have the possibility of submitting an application of review to the administrative court regarding the contracting authority's procurement. It ought to be noted that it is not uncommon that contract award decisions are subject to applications for review.
- Why? If a tenderer is not satisfied with a contract award decision and has suffered harm or risks suffering harm as a result of the contracting authority's decision, the tenderer may submit an application for review of the procurement to the administrative court.
- Where? The competent administrative court is the court where the contracting authority is established. On the Swedish Court's website, there is a tool for finding out which court the application is to be sent to, by entering the contracting authority's postal code.
- When? An application for review of the procurement, as a main rule, needs to be submitted to the court within the standstill period (i.e. usually within ten days).
- Possible outcome? If the court finds that there has been a breach of the relevant procurement law and that the applicant has suffered harm or risks suffering harm, the court shall decide that the procurement shall be recommenced or that it may be concluded only once corrections have been made. Whether the court rules that the procurement should be recommenced or corrected, usually depends on during which stage of the procedure the breach occurred.

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