

**Doing Business in
the Swedish Defence Sector**

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 Recruitment 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 still 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. Since 2016, FMV is responsible for public procurements for the authorities relating to the defence and civil sector, as well as delivering material and services to the Swedish Armed Forces.

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

- > Swedish Fortifications Agency (Sw: Fortifikationsverket)
- > National Defence Radio Establishment (Sw: Försvarets radioanstalt), which is the national authority for signals intelligence
- > Swedish Defence Research Agency (Sw: Totalförsvarets forskningsinstitut)

- > Swedish Defence University (Sw: Försvarshögskolan)
- > Swedish Defence Recruitment Agency (Sw: Rekryteringsmyndigheten)
- > Swedish Armed Forces (in some cases)

However, from 1st January 2019 the Swedish Armed Forces is responsible for the majority of its own procurements (see section 2.2 below).

2.2. Public procurement by the Swedish Armed Forces

From 1st 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.¹

However, FMV will provide assistance to the Swedish Armed Forces with, amongst others things, competence in the fields of maintenance and procurement. Besides its assisting function, FMV is responsible for all procurements outside the scope of the Swedish Armed Forces' responsibility. 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.

During an unspecified transition period, when necessary and on behalf of the Swedish Armed Forces, FMV will procure goods, services and constructions that are required in order to uphold the Swedish Armed Forces' equipment.³

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

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

³Hemställan om Försvarsmaktens budgetunderlag för 2020 av den 28 februari 2019, beteckning FM2018-15180:15, appendix 1, page 7 (only in Swedish).

For example, FMV is currently carrying out a procurement of network products (hardware and integrated software) and related services. Furthermore, FMV has planned procurements of technical services for a garrison facility and a framework agreement with several vendors regarding technical consultants to the Swedish Navy.⁴

It ought to be noted that about twenty-five per cent of procurements are carried out to a fixed price, whereas seventy-five per cent are subject to price indexes and fluctuations. This is because the majority of the Swedish Armed Forces' procurements regard long-term contracts, making it difficult for vendors to predict their costs.

2.3. Budget for the Swedish Armed Forces – today and the predicted future

As the below figure shows, there has been a steady budget increase for the Swedish Armed Forces over the past 10 years.

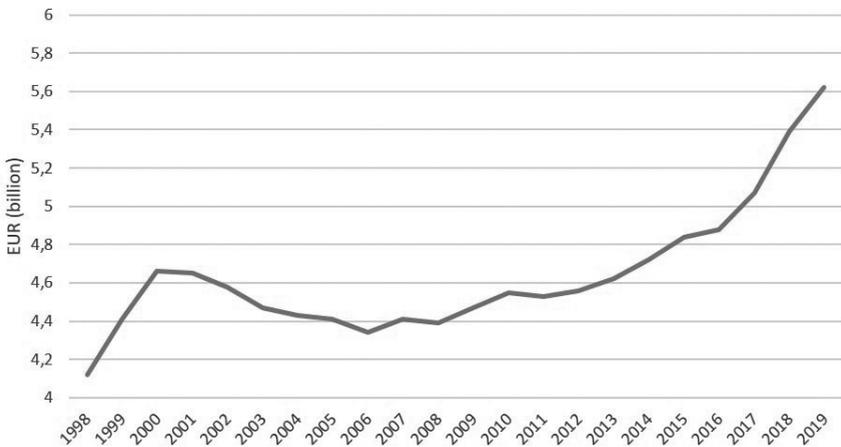


Figure 1. Budget diagram for 1998-2019.

The preliminary budget for 2019 indicates that the budget for the Swedish Armed Forces will continue to increase in the coming years.

⁴Based on the published current and planned procurements published in the Swedish procurement tool e-Avrop as of May 2019

In addition, the Swedish Armed Forces has requested a rather steep, further increase in its budget, with the goal of receiving 10.6 billion EUR by 2035.⁵

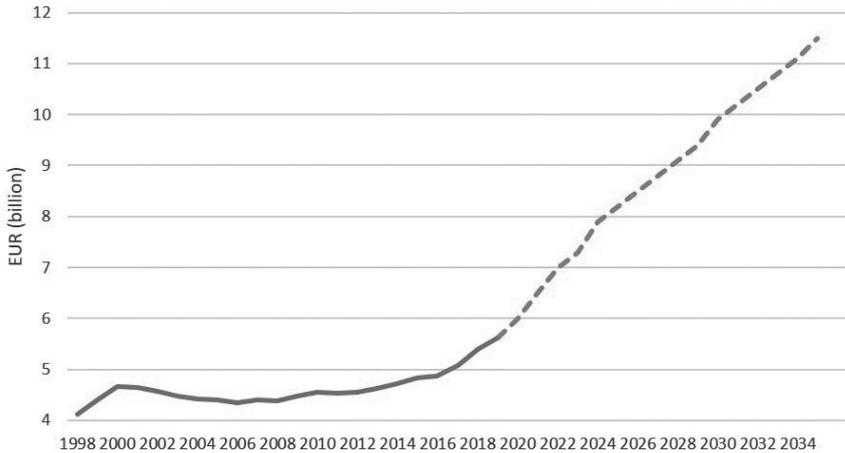


Figure 2. Budget diagram for 1998-2035, numbers from 2020 as requested by Swedish Armed Forces.⁶

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 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. According to Micael Bydén, the Supreme Commander of the Swedish Armed Forces, a stable and reliable military defence capability requires a long-term effort by the Swedish Armed Forces.⁷ This view has recently been confirmed by the Swedish Defence Commission in a thorough and extensive 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.⁸

⁵ Slutredovisning av Försvarsmaktens perspektivstudie 2016-2018, page 6, (only in Swedish). 10.6 billion EUR as of exchange rates in May 2019.

⁶ NBI Requested budget for 2035 is 10.6 billion EUR, the numbers leading up to that sum 2020-2035 are only aimed at showing the upward going trend.

⁷ Slutredovisning av Försvarsmaktens perspektivstudie 2016-2018, pages 7-8, (only in Swedish).

⁸ Ds 2019:8, Värnkraft - Inriktningen av säkerhetspolitiken och utformningen av det militära försvaret 2021-2025, pages 41-42, (only in Swedish).

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, the Swedish Armed Forces has begun the remilitarisation of the island of Gotland. Gotland is Sweden's largest island, located in the Baltic Sea, about ninety kilometres east of the mainland and is strategically important to the Swedish Armed Forces. The remilitarisation consists of strengthening both the military and civil defence of Gotland and, from the 1st January 2018, the first parts of Gotland's regiment were established. The measures for remilitarisation include a permanent mechanised unit⁹ including combat vehicles. Furthermore, it is of particular importance for air defence units to regularly practice on Gotland.¹⁰

Secondly, in 2018 Sweden reinstated conscription. Sweden has previously had a mandatory military service, but this was abolished in 2010. During 2018, approximately four thousand eighteen year old men and women went into the defence forces. 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 be about eight thousand per year from 2021 with an increasing demand to about ten thousand recruits by 2025.¹²

A third example on the Swedish Armed Forces' rearmament is the forecasted need to double the amount of JAS 39E Gripen aircrafts. In 2014, the Swedish government decided that the Swedish Armed Forces were to order sixty JAS 39E aircrafts.¹³ However, the Swedish Armed Forces has indicated that as many as 120 aircrafts are necessary in order to be able to achieve its tasks and effectively defend Swedish airspace.¹⁴

⁹ Units that are trained and equipped for combat against all types of enemy in different terrains and environments. (<https://www.forsvarsmakten.se/en/about/organisation/the-army/>, read 27-03-2019).

¹⁰ Proposition 2014/15:109 page 13 cont., (only in Swedish).

¹¹ As of statistics up until 5th July 2019, 3 625 men and women had been conscripted. https://www.rekryteringsmyndigheten.se/globalassets/service-och-e-tjanster/statistik/monstringsstatistik/sa-manga-har-skrivits-in-till-de-olika-forbanden_180705.pdf.

¹² Slutredovisning av Försvarsmaktens perspektivstudie 2016-2018, page 82, (only in Swedish). Note that this demand in recruits will most likely primarily be met through conscription, but can also be achieved through voluntarily recruits.

¹³ Proposition 2016/17:1, page 40 (only in Swedish).

¹⁴ <https://www.svd.se/flygvapenchef-fler-gripenplan-behovs>, read 28-03-2019.

2.5. Purchase Needs in the Near Future

2.5.1. Swedish Armed Forces' Wish List

The Swedish Armed Forces has flagged several purchase needs in the near future. Apart from doubling the number of JAS 39E Gripen aircrafts, the following are examples of the Swedish Armed Forces' "wish list":

- > **Helicopters.** As a consequence of the ravaging fires during the summer of 2018, the Swedish Accident Investigation Authority (Sw: Statens haverikommission) initiated an investigation of the operational readiness of rescue helicopters. The investigation concluded that the capability of the rescue helicopters is insufficient. The members of the Swedish parliament have indicated that the identified need for additional helicopters will be met.¹⁵
- > **Air defence systems.** The Swedish Armed Forces has earlier procured air defence systems for two battalions. However, according to several representatives for different parties in the Swedish parliament, more needs to be done.¹⁶ For example, the Swedish Air Force is using an interim solution while waiting to procure a new and modern robotic system for air defence.¹⁷
- > **Personnel.** As indicated in above section 2.4, conscription has been reinstated in order to meet the increased forecasted needs. The ambition is to increase personnel from fifty thousand to one hundred and twenty thousand.¹⁸
- > **Reinforcement.** Besides the aforementioned procurements, the Swedish Armed Forces needs army brigades, dragoon battalions and a reinforced combat group on Gotland as well as cruisers and submarines.

Furthermore, the Swedish Defence Council, a forum for consultation between the Swedish government and representatives of all the political parties in the parliament, has set a goal that Sweden shall be able to manage an ongoing, highly intensive combat on Swedish territory against a highly sophisticated opponent, for three months without outside help.¹⁹ In order to achieve this goal, rearmament within the Swedish defence sector will be required.

¹⁵ The Swedish Accident Investigation Authority, Slutrapport RO 2019:01, Tema utredning: Räddnings-insatser med Sjöfartsverkets helikoptrar, diarienumr. O-2/18, 2019-01-29, summary in English on pages 8-10.

¹⁶ <https://www.nyteknik.se/samhalle/sverige-satsar-miljard-er-pa-kop-av-luftvarnssystem-6882314>, published 8th November 2017, read 10-04-2019.

¹⁷ <https://www.forsvarsmakten.se/sv/aktuellt/2019/01/nygammalt-luftvarn-ska-skydda-armebrigaderna/>, published 23rd January 2019, read 10-04-2019.

¹⁸ <https://www.di.se/nyheter/forsvarsmakten-vill-ha-ett-fordubblat-forsvar/>, published 23rd February 2018, read 28-03-2019.

¹⁹ <https://www.di.se/nyheter/forsvarsmakten-vill-ha-ett-fordubblat-forsvar/>, published 23rd February 2018, read 28-03-2019.

In the recent report from the Swedish Defence Commission, the majority of the Swedish Armed Forces' requests have been met. The report identifies, for example, the following needs:

- > Replacement of the whole fleet of combat vehicles and tanks.²⁰
- > Extensive procurements of trucks, material, ammunition and additional supplies (in this regard, the Commission especially addresses the circumstance that the life cycle is becoming shorter and shorter, thus an increasing need to keep the equipment and army up to date).²¹
- > New surface vessels and heavy combat ships, combat submarines and marine helicopters.²²
- > An expansion of the organization, with both re-instated and new regiments and air force wings, besides the doubled number of recruits to the Swedish Armed Forces.²³

2.5.2. Current and Planned Procurements by the Swedish Defence Sector

In addition to above, the Swedish defence sector (i.e. the Swedish Armed Forces and FMV) are currently carrying out several procurements.²⁴ A few examples of current procurements are:

- > Framework agreement for consultants within IT-security to provide certification services on behalf of FMV.
- > Framework agreement to provide the Armed Forces with a solution for the administration and technical development of the Armed Forces' external digital channels, such as websites, applications and other digital platforms.
- > Framework agreement for consulting services for Integrated Logistic Support (ILS), with an estimated contract value of 1.1 MEUR²⁵ per year.

Furthermore, FMV will be carrying out several procurements of system services and technical consulting services in the near future (i.e. under 2019). Such system and consulting services are, for example, systems- and life cycle support for the Swedish Armed Forces technical systems, marine management systems and technical consulting services with several suppliers regarding management systems.

²⁰ Ds 2019:8, Värnkraft - Inriktningen av säkerhetspolitiken och utformningen av det militära försvaret 2021-2025, page 165, (only in Swedish).

²¹ Ds 2019:8, Värnkraft - Inriktningen av säkerhetspolitiken och utformningen av det militära försvaret 2021-2025, pages 166, 172-173 and 259, (only in Swedish).

²² Ds 2019:8, Värnkraft - Inriktningen av säkerhetspolitiken och utformningen av det militära försvaret 2021-2025, page 166, (only in Swedish).

²³ Ds 2019:8, Värnkraft - Inriktningen av säkerhetspolitiken och utformningen av det militära försvaret 2021-2025, page 336, (only in Swedish).

²⁴ <https://www.di.se/nyheter/forsvarsmakten-vill-ha-ett-fordubblat-forsvar/>, published 23rd February 2018, read 28-03-2019.

²⁵ As of exchange rates in May 2019.

Planerade upphandlingar

Upphandlingar i planeringstadium		
RUBRIK	CPV-KOD	PLANERAD
Ramavtal avseende Metodstöd marint systemarbete	72220000: Systemtjänster och tekniska konsulttjänster	Kvartal 1 2019
Ramavtal avseende Marina ledningssystem	72220000: Systemtjänster och tekniska konsulttjänster	Kvartal 3 2019
Ramavtal avseende Marina plattformar	72220000: Systemtjänster och tekniska konsulttjänster	Kvartal 3 2019
Ramavtal avseende konsulttjänster inom verifiering och validering	72220000: Systemtjänster och tekniska konsulttjänster	Kvartal 3 2019
Garnisonsanläggningar	72220000: Systemtjänster och tekniska konsulttjänster	Kvartal 3 2019
Ramavtal avseende tekniska konsulttjänster inom ledningssystem	72220000: Systemtjänster och tekniska konsulttjänster	Kvartal 3 2019
Ramavtal avseende Systemarbets- och livscykelstöd till FM tekniska system	72220000: Systemtjänster och tekniska konsulttjänster	Kvartal 3 2019

Figure 3. Screenshot from the Swedish procurement tool, e-Avrop, of the Swedish defence sector's planned procurements.²⁶

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.

²⁶ <https://www.e-avrop.com/fmv/e-Upphandling/planedComing.aspx>, read 14-05-2019.

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 values²⁷, different rules apply.²⁸ 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 or works. For reference, the threshold values for procurements carried out by a central government authority is 126 705 EUR for goods and services and 4 881 668 EUR for works.²⁹

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.

A procurement below the threshold values may be carried out as a simplified procedure or a selective procedure.

The vast majority, about ninety-four percent (during 2017), of all public procurements in Sweden are carried out as either open or simplified procedures, while innovation partnerships and competitive dialogues are rarely used.³⁰ In some situations, most commonly when the contract value is below both the threshold values and the nationally decided amount for direct awards, the contract may be awarded through a direct award without prior call for competition.

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).

²⁷The 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).

²⁸For example, social and other specific services are subject to lighter regulations and are not addressed in this booklet.

²⁹As of the threshold values and exchange rates of May 2019.

³⁰The National Agency for Public Procurement and the Swedish Competition Authority, Statistisk om offentlig upphandling 2018 (only in Swedish), page 49, schedule 5.

The simplified procedure and the selective procedure correspond to the open procedure and the restricted procedure respectively. However, negotiations between the contracting authority and the tenderers are always allowed in procurements below the threshold values.

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.³¹

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.

Procurements according to LUFSS 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. Procurements below the threshold values may be carried out through the same procedures as procurements below the threshold amount in accordance with LOU, as described in section 3.1.1 above.

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.

³¹ Certain services, so called Annex B-services, are subject to a lighter regulation and are not addressed in this booklet.

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 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.³²

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.³³

³² Proposition 2017/18:89 page 35 cont., (only in Swedish).

³³ Ibid, page 42.

The fact that the Protective Security Act is applicable in a procurement must not be confused with the application of LUFSS (as described above in section 3.1.2). In order for LUFSS 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 LUFSS becomes applicable in the procurement. However, when LUFSS is applicable, the Protective Security Act is in most cases also applicable.³⁴

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.

3.3. 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.

3.3.1. 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”).³⁵ 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 Visma, 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 and FMV publish their procurements in eAvrop and, when obliged to do so, TED.

³⁴ Proposition 2017/18:89 page 35 cont., (only in Swedish).

³⁵ Procurements below the threshold values shall be published in a “publicly available electronic database” such as Visma, eAvrop and Mercell.

3.3.2. Notices About Procurements and Subscription Services

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 LUFSS 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 LUFSS.

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.

3.3.3. Submitting a Tender

- > 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.
- > 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 publically 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.

3.3.4. 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 3.3.5).
- > 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.

3.3.5. 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.³⁶ 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.

³⁶ It is also possible, under certain circumstances, to apply for review of a decision to cancel a procurement ineffectiveness of a contract.

- > 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 which stage of the procedure the breach occurred.

4. About Advokatfirman Kahn Pedersen

Kahn Pedersen is a law firm focused on specialised business law. We only engage in assignments that are within our two business areas, Digital and Public. See www.kahnpedersen.se for more information about us.

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