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Federal Act on Public Procurement (PPA)

of 21 June 2019 (Status as of 1 January 2022)

The Federal Assembly of the Swiss Confederation,
based on Article 173 paragraph 2 of the Federal Constitution¹,
in application of the Protocol of 30 March 2012²
Amending the Agreement on Government Procurement,
Articles 3 and 8 of the Agreement of 21 June 1999³ between the European Community
and the Swiss Confederation on certain aspects of government procurement,
Article 3 of Annex R to the Convention of 4 January 1960⁴
establishing the European Free Trade Association,
as well as other international agreements containing market access commitments in the
area of public procurement,
and having considered the Federal Council dispatch dated 15 February 2017⁵,
decrees:

Chapter 1 Subject Matter, Purpose and Definitions

Art. 1 Subject matter

This Act applies to the awarding of public contracts by contracting authorities subject to it both within and outside the scope of international treaties.

Art. 2 Purpose

The purpose of this Act is to ensure:

- a. the cost-efficient use of public funds in a manner that is economically, ecologically and socially sustainable;
- b. the transparency of the award procedure;
- c. equal treatment and non-discrimination of tenderers;

AS 2020 641

¹ SR 101

² BBl 2017 2175

³ SR 0.172.052.68

⁴ SR 0.632.31

⁵ BBl 2017 1851

- d. the promotion of effective, fair competition among tenderers, in particular by means of measures against unlawful agreements affecting competition and measures against corruption.

Art. 3 Definitions

In this Act:

- a. *tenderer* means an individual or legal entity under private or public law, or a group of such persons or entities, which supplies goods, work or services or which applies to participate in a public tender, the delegation of a public task or the granting of a concession;
- b. *public* undertaking means an undertaking over which public authorities may directly or indirectly exercise a dominant influence by virtue of their ownership, their financial participation, or the rules which govern it; a dominant influence is presumed to exist if the undertaking's assets are predominantly financed by the state or by other public undertakings, if its management is subject to supervision by the state or by other public undertakings, or if its administrative, managerial or supervisory bodies are made up predominantly of members appointed by the state or by other public undertakings;
- c. *scope of international treaties* means the scope of application of Switzerland's international obligations concerning public procurement;
- d. *terms and conditions of employment* means the mandatory provisions of the Swiss Code of Obligations⁶ concerning the employment contract, normative provisions of collective and standard employment contracts or, in the absence of these, the employment conditions customary in the place of work and in the sector;
- e. *workplace health and safety regulations* are provisions of public employment law, including the provisions of the Federal Act of 13 March 1964⁷ on Employment in Business, Trade and Industry and the related implementing legislation, as well as the provisions on accident prevention.

Chapter 2 Scope of Application

Section 1 Subjective Scope

Art. 4 Contracting authorities

¹ The following are subject to this Act as contracting authorities:

- a. administrative units of the central and decentralised Federal Administration in accordance with Article 2 of the Federal Act of 21 March 1997⁸ on the

⁶ SR 220

⁷ SR 822.11

⁸ SR 172.010

Organisation of the Government and the Administration and the associated implementing provisions that apply at the time of the invitation to tender;

- b. federal judicial authorities;
- c. the Office of the Attorney General of Switzerland;
- d. Parliamentary Services.

² Public and private undertakings that provide public services and that have exclusive or special rights are subject to this Act if they carry out activities in one of the following sectors in Switzerland:

- a. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water, or the supply of drinking water to such networks;
- b. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity, or the supply of electricity to such networks;
- c. the provision of airports or other terminal facilities to air carriers;
- d. the provision of inland ports or other terminal facilities to inland waterway carriers;
- e. the provision of postal services in the reserved services area in accordance with the Postal Services Act of 17 December 2010⁹;
- f. the provision or operation of railways, including the traffic thereon;
- g. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat, or the supply of gas or heat to such networks; or
- h. the exploitation of a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels.

³ The contracting authorities under paragraph 2 are subject to this Act only in the case of procurements for the area of activity described, but not for their other activities.

⁴ If a third party awards a public contract on behalf of one or more contracting authorities, this third party is subject to this Act in the same way as the contracting authority it represents.

Art. 5 Applicable law

¹ If several contracting authorities subject to federal and cantonal law participate in a procurement, the law of the community whose contracting authority provides the most financing applies. If the total cantonal share outweighs the federal share, this Act does not apply.

⁹ SR 783.0

² Several contracting authorities involved in a procurement may, by mutual agreement, make a joint procurement subject to the law of one of the contracting authorities involved, in derogation from the above principles.

³ Public and private undertakings that have been granted exclusive or special rights by the Confederation or that perform tasks in the national interest may choose whether to subject their procurements to the law of their place of business or to federal law.

Art. 6 Tenderers

¹ Under this Act, tenderers from Switzerland are permitted to submit a tender, as are tenderers from countries with which Switzerland has undertaken to grant market access on a contractual basis, provided such countries have undertaken the same commitment to Switzerland.

² Outside the scope of international treaties, foreign tenderers are permitted to submit a tender if their countries of origin grant reciprocal rights or if the contracting authority so permits.

³ The Federal Council shall keep a list of the countries that have undertaken to grant market access to Switzerland. The list shall be updated periodically.

Art. 7 Exemption from subjection

¹ If there is effective competition in the market for a sector under Article 4 paragraph 2, the Federal Council, acting on a proposal from a contracting authority or the Intercantonal Public Procurement Body (InöB), shall issue an ordinance exempting procurements in this market from being subject to this Act in whole or in part.

² Before issuing its ordinance, the Federal Council shall consult the Competition Commission, the Intercantonal Public Procurement Body and the business circles concerned. The Competition Commission may publish its expert opinion, provided it pays due regard to commercial secrecy.

Section 2 Objective Scope

Art. 8 Public contract

¹ A public contract is a contract that is entered into by the contracting authority and the tenderer for the performance of a public task. It involves the payment of money in return for the supply of goods, work or services, with these characteristic supplies being provided by the tenderer.

² A distinction is made between the following supplies:

- a. construction work;
- b. supplies of goods;
- c. services.

³ Mixed contracts comprise various supplies in accordance with paragraph 2 and form an overall transaction. The overall transaction is categorised based on the financially predominant supply. Supplies may not be mixed or bundled with the intention or effect of circumventing the provisions of this Act.

⁴ Within the scope of international treaties, supplies in accordance with Annexes 1 to 3 are subject to this Act if they reach the threshold values in section 1 of Annex 4.

⁵ Public contracts outside the scope of international treaties and the special provisions applicable thereto are listed in Annex 5.

Art. 9 Delegation of public tasks and granting of concessions

The delegation of a public task or the granting of a concession is deemed to be a public contract if it gives the tenderer exclusive or special rights which the tenderer exercises in the public interest and for which the tenderer receives remuneration or compensation directly or indirectly. The provisions of special legislation remain reserved.

Art. 10 Exceptions

¹ This Act does not apply to:

- a. the procurement of goods, work and services with a view to commercial sale or resale, or with a view to use in the production or supply of goods, work and services for commercial sale or resale;
- b. the acquisition, rental or leasing of land, buildings and installations, and the corresponding rights thereto;
- c. the granting of financial assistance in accordance with the Federal Act of 5 October 1990¹⁰ on Financial Assistance and Subsidies;
- d. contracts for financial services relating to the issuance, purchase, sale, transfer or management of securities or other financial instruments and central bank services;
- e. contracts with institutions for the disabled, work integration organisations, charities and penal institutions;
- f. contracts under personnel law;
- g. the following legal services:
 1. representation of the Confederation or a federal public corporation by a lawyer in national or international arbitration, conciliation or court proceedings and associated services,
 2. legal advice from a lawyer with regard to possible proceedings under number 1 if there is a high probability that the matter to which the advice relates will become the subject of such proceedings;

¹⁰ SR 616.1