

*English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.*

## **Ordinance on Public Procurement (PPO)**

of 12 February 2020 (Status as of 1 January 2021)

---

*The Swiss Federal Council,*

based on Articles 6 paragraph 3, 7 paragraph 1, 12 paragraph 3, 22 paragraph 2, 24 paragraph 6, 45 paragraph 3, 48 paragraph 5 and 60 paragraphs 1 and 2 of the Federal Act of 21 June 2019<sup>1</sup> on Public Procurement (PPA),

*ordains:*

### **Section 1    Scope of Application**

#### **Art. 1            Reciprocal rights**

(Art. 6 paras. 2 and 3 as well as 52 para. 2 of the PPA)

<sup>1</sup> The State Secretariat for Economic Affairs (SECO) shall keep a list of the countries that have undertaken to grant market access to Switzerland.

<sup>2</sup> It shall be published on the internet platform for public procurement<sup>2</sup> operated by the Confederation and the cantons.

<sup>3</sup> SECO shall answer questions on the commitments entered into.

#### **Art. 2            Exemption from the PPA**

(Art. 7 of the PPA)

<sup>1</sup> The sectoral markets listed in Annex 1 are exempt from the PPA.

<sup>2</sup> Proposals for the exemption of other sectoral markets must be submitted to the Federal Department of the Environment, Transport, Energy and Communications (DETEC).

<sup>3</sup> If DETEC considers the conditions for exemption to be fulfilled, it shall submit a proposal for an amendment to Annex 1 to the Federal Council.

AS 2020 691

<sup>1</sup> SR 172.056.1

<sup>2</sup> www.simap.ch

## **Section 2    General Principles**

### **Art. 3            Measures to counter conflicts of interest and corruption**

(Art. 11 let. b of the PPA)

<sup>1</sup> The employees of a contracting authority, as well as third parties commissioned by the contracting authority who are involved in an award procedure, shall be obliged to:

- a. disclose any secondary employment and contractual relationships as well as vested interests that could lead to a conflict of interest in the award procedure;
- b. sign a declaration of impartiality.

<sup>2</sup> The contracting authority shall regularly instruct its employees who participate in award procedures on how to effectively prevent conflicts of interest and corruption.

### **Art. 4            Participation conditions and eligibility criteria**

(Art. 12, 26 and 27 of the PPA)

<sup>1</sup> The contracting authority may entrust the performance of checks relating to equal pay to the Federal Office for Gender Equality (FOGE) in particular. The FOGE shall specify the details of its checks in a directive. The contracting authority may forward the self-declarations of the tenderers concerning compliance with equal pay rules to the FOGE.

<sup>2</sup> In terms of important international labour standards and in addition to the core conventions of the International Labour Organization (ILO) in accordance with Annex 6 of the PPA, the contracting authority can require compliance with principles from other ILO conventions, provided Switzerland has ratified them.

<sup>3</sup> In the case of goods, work and services that are provided abroad, the conventions in accordance with Annex 2 shall apply in addition to the environmental law applicable at the place of performance.

<sup>4</sup> In order to verify that tenderers fulfil the participation conditions and the eligibility criteria, the contracting authority may, in view of the contract in question, require some of the documents and evidence given by way of example in Annex 3.

## **Section 3    Award Procedure**

### **Art. 5            Invitation procedure**

(Art. 20 of the PPA)

The contracting authority shall invite at least one tenderer belonging to another language region of Switzerland, if this is possible and reasonable.

**Art. 6** Dialogue

(Art. 24 of the PPA)

<sup>1</sup> The contracting authority shall, if possible, select at least three tenderers which it invites to participate in the dialogue.

<sup>2</sup> The process of the dialogue, including duration, deadlines, compensation and use of intellectual property rights, shall be set out in a dialogue agreement. Acceptance of the dialogue agreement is a prerequisite for participation in the dialogue.

<sup>3</sup> Both during a dialogue and following the award of the contract, no information on solutions and procedures of the individual tenderers may be disclosed without the written consent of the tenderer concerned.

**Art. 7** Description of goods, work and services

(Art. 36 let.b of the PPA)

<sup>1</sup> The contracting authority shall describe the requirements of the goods or services, in particular their technical specifications in accordance with Article 30 of the PPA, in as much detail and as clearly as necessary.

<sup>2</sup> Instead of a description in accordance with paragraph 1, it may specify the objective of the procurement.

**Art. 8** Questions concerning the tender documentation

(Art. 36 of the PPA)

<sup>1</sup> The contracting authority may specify in the tender documentation a deadline by which questions may be accepted.

<sup>2</sup> It shall make all questions concerning the tender documentation anonymous and make the questions and answers available to all tenderers at the same time within a few working days after the deadline for submitting questions.

**Art. 9** Compensation for tenderers

(Art. 24 para. 3 let. c as well as 36 let. h of the PPA)

<sup>1</sup> Tenderers are not entitled to compensation for participation in a procedure.

<sup>2</sup> If the contracting authority requires advance goods or services that exceed the normal expenditure, it shall state in the tender documentation whether and how it compensates for such advance goods or services.

**Art. 10** Documentation duties

(Art. 37, 38, 39 para. 4 and 40 para. 1 of the PPA)

<sup>1</sup> The opening and evaluation of tenders shall be documented by the contracting authority in a comprehensible manner.

<sup>2</sup> The adjustment log shall contain at least the following information:

- a. place;
- b. date;

- c. names of the participants;
- d. adjusted elements of the tender;
- e. results of the adjustment.

**Art. 11** Conclusion of the contract

(Art. 42 of the PPA)

<sup>1</sup> The contracting authority shall conclude the contract in writing.

<sup>2</sup> It shall apply its general terms and conditions unless the nature of the goods or services requires special contractual terms and conditions.

**Art. 12** Debriefing

(Art. 51 of the PPA)

<sup>1</sup> The contracting authority shall conduct a debriefing with an unsuccessful tenderer at its request.

<sup>2</sup> In the debriefing, the principal reasons, in particular, for not selecting the tender shall be given. Confidentiality in accordance with Article 51 paragraph 4 of the PPA must be ensured.

**Section 4** Competition and Study Contract Procedures

(Art. 22 of the PPA)

**Art. 13** Type of goods, work and services

Competition and study contract procedures may be used to procure all goods, work and services within the meaning of Article 8 paragraph 2 of the PPA.

**Art. 14** Scope of application

<sup>1</sup> Competition and study contract procedures may be used by the contracting authority to develop various solutions, in particular with regard to conceptual, design, environmental, economic, functional or technical aspects.

<sup>2</sup> Competition procedures shall be used for tasks that can be sufficiently and conclusively defined in advance.

<sup>3</sup> Study contract procedures are suitable for tasks which, due to their complexity, can only be specified and completed during the course of the procedure.

**Art. 15** Types of procedure

<sup>1</sup> Competitions and study contracts shall be put out to tender in an open or selective procedure, provided the value of the contract reaches the relevant threshold laid down in Annex 4 of the PPA.

<sup>2</sup> If these thresholds are not reached, the competition or study contract may be awarded in an invitation procedure.

<sup>3</sup> The number of participants may be reduced in the course of the procedure, provided this eventuality was indicated in the invitation to tender.

**Art. 16** Independent panel of experts

<sup>1</sup> The independent panel of experts shall be composed of:

- a. specialists in at least one field relevant to the goods or services tendered for;
- b. other persons freely designated by the contracting authority.

<sup>2</sup> The majority of the members of the panel must be specialists.

<sup>3</sup> At least half of the specialists must be independent from the contracting authority.

<sup>4</sup> The panel may call in experts at any time to give their opinion on specialist issues.

<sup>5</sup> In particular, it shall make a recommendation to the contracting authority for the award of a subsequent contract or for the next steps to be taken. In the competition procedure, it shall also decide on the ranking of the formally correct competition entries and on the awarding of prizes.

<sup>6</sup> It may also rank, or recommend for further processing, entries that deviate in key areas from the requirements of the invitation to tender (purchase), provided:

- a. this possibility has been expressly set out in the invitation to tender; and
- b. it decides so in the quorum set out in the invitation to tender.

**Art. 17** Special provisions on the competition procedure

<sup>1</sup> In the competition procedure, competition entries must be submitted anonymously. Participants who violate the anonymity requirement will be excluded from the competition.

<sup>2</sup> The members of the independent panel of experts shall be disclosed in the tender documents.

<sup>3</sup> The contracting authority may revoke anonymity prematurely if this is stipulated in the invitation to tender.

**Art. 18** Claims arising from the competition or study contract

<sup>1</sup> The contracting authority shall, in particular, set out the following in the invitation to tender:

- a. whether the winner will receive a subsequent contract;
- b. what the participants are entitled to (in particular prizes, compensation, any purchases).

<sup>2</sup> In addition, the invitation to tender must specify what additional claims to compensation the creators of entries have, in cases where:

- a. a subsequent contract has been announced; and