



## Fact Sheet

July 23, 2021

## A Brief Primer on Public Procurement

### Basic Principles and Scope of Application

#### Statutory basis

The law enacted on 15 March 2001 authorizing the Canton of Zurich's accession to the revised Inter-cantonal Accord on Public Procurement (IAPP Accession Act) and the amended bidding process ordinance (Submissionsverordnung, SVO) dated 23 July 2003 (based on § 4 of the 15 March 2001 law authorizing accession to the revised IAPP) both entered into force on 1 January 2004.

#### Treaties

- **WTO Government Procurement Agreement (GPA):** The WTO Government Procurement Agreement establishes international ground rules for public procurement. It includes in particular the principles of non-discrimination and equal treatment of tenderers. Switzerland joined the GPA on 1 January 1996.
- **Switzerland's bilateral agreements with the EU and the convention between the EFTA member countries:** One of the seven bilateral accords between Switzerland and the EU (in force since 1 June 2002) poses an additional treaty obligation in the area of public procurement. Similar rules apply in Switzerland's relations with the EFTA member countries.

#### The rules' scope of application

Entities including public-sector institutions established at the cantonal or municipal level (a category that includes the University of Zurich) must issue a public call for tenders for procurement undertakings that exceed the relevant threshold values, except in the case of their commercial or industrial operations.

#### Procedural principles

- Non-discrimination and equal treatment of tenderers
- Effective competition
- Eschewal of bidding rounds
- Observance of recusal rules
- Adherence to occupational safety and health regulations and employment terms and conditions for workers
- Equal treatment of men and women
- Confidentiality of information
- Principles of openness and transparency
- Principle of efficient use of public funds

### Threshold values and types of tendering procedures

The public procurement rules establish different types of tendering procedures. The contract value in each case (in CHF, excluding VAT) determines which tendering procedure to employ. If the estimated



order contract value (physical goods plus accompanying services) exceeds a defined threshold value (see page 2), the corresponding higher-level tendering procedure must be implemented.

The greater the contract value, the more open the bidding competition must be. Bear in mind that order contracts that are materially related may not be split up to circumvent the tendering regulations. If, for example, an order contract includes an option for subsequent contracts, or if contracts spanning multiple years are envisaged, the combined total value is the determining factor.

For order contracts that exceed a threshold value of CHF 350,000 excluding VAT, Switzerland's treaties with the WTO, the EU and the EFTA member countries must be observed in addition to the intercantonal legislation. This generally results in longer tender submission periods.

Type of tendering procedure	Goods supply contracts* (contract value excluding VAT)	
Single-tendering procedure	Below	CHF 100,000
Invitation procedure	Between	CHF 100,000 and CHF 249,999
Open/selective tendering procedure (intercantonal law)	Between	CHF 250,000 and CHF 349,999
Open/selective tendering procedure (international treaty jurisdiction)	Upwards of	CHF 350,000

\* By way of purchase, lease or lease-to-purchase agreement.

Type of tendering procedure	Contracts for services (contract value excluding VAT)	
Single-tendering procedure	Below	CHF 150,000
Invitation procedure	Between	CHF 150,000 and CHF 249,999
Open/selective tendering procedure (intercantonal law)	Between	CHF 250,000 and CHF 349,999
Open/selective tendering procedure (international treaty jurisdiction)	Upwards of	CHF 350,000

#### Definition of tendering procedure types and time limits

- **Single-tendering procedure:** The contract is directly awarded to a supplier without a prior public call for tenders. Pursuant to a ruling handed down by the Administrative Court of the Canton of Zurich on 20 May 2009 (VB.2008.00555; see [www.vgrzh.ch](http://www.vgrzh.ch)), it is now permitted under the single-tendering procedure to solicit one or more competing offers without, by the act of doing so, automatically turning the procedure into the next-higher-level one and thus without having to observe the rules of that higher-level procedure.
- **Invitation procedure:** The contracting authority selects at least three bidders that are to be invited directly to submit tenders.
- **Open tendering procedure:** The contracting authority issues a public invitation to tender for the proposed contract. All tenderers that meet the eligibility criteria may submit a bid within a 20-day deadline (the time limit under international treaty jurisdiction is 40 days!).
- **Selective tendering procedure:** The contracting authority issues a public invitation to tender for the proposed contract. All tenderers that meet the eligibility criteria may submit an application to participate ("prequalification") within a 20-day deadline (the time limit under international



treaty jurisdiction is 25 days!). This enables the group of tenderers ultimately invited to submit a bid to be restricted to a number (at least three!) that allows the contract award procedure to be carried out efficiently. The tenderers selected to participate on the basis of objective eligibility criteria then have 20 days to submit a bid (the time limit under international treaty jurisdiction is 40 days!).

#### Exceptions allowing use of the single-tendering procedure in spite of an exceeded threshold value

Under certain conditions, a contract can be awarded directly without a prior public call for tenders (SVO § 10). The following are the main exception conditions pertinent to the University of Zurich pursuant to SVO § 10:

- When, due to the technical or artistic particularities of a contract or due to reasons connected with the protection of intellectual property, only one suitable tenderer can come into consideration and there is no adequate alternative (**technical particularities**).
- Goods or services intended to replace, complete or supplement goods or services already supplied must be acquired from the original tenderer because this is the only way of ensuring interchangeability with existing goods or services (**supplementation of goods or services already supplied**).
- When the contracting authority issues a new, similar contract related to a base contract that was awarded through an open or selective tendering procedure. The contracting authority must specifically have made mention in the invitation to tender or in the tender documentation for the base supply of a good or service that the single-tendering procedure can be employed for subsequent similar contracts (**similar contracts**).
- When the contracting authority procures a first good (prototype) or new type of service that is manufactured or developed at its request in the course of a particular contract for research, experiment, study or original development (**novelty**).

The contracting authority must produce a report for each single-tender contract awarded under international treaty jurisdiction. The report must specify the name of the contracting authority, the value and nature of the procurement, the country of origin of the procured good or service, and a citation of the provision under Paragraph 1 that justified the single tender.

### **Procedural Steps of a Public Call for Tenders**

#### Preface

You should contact Moveable Assets Office (MO) beforehand if a planned procurement exceeds the threshold value of CHF 250,000 excluding VAT. MO supervises every procurement exceeding CHF 250,000 and assists UZH organizational units in correctly carrying out the procurement process. The obligation to conduct a call for tenders for planned procurements exceeding CHF 250,000 applies to all UZH procurements regardless of how they are funded (Investment Fund, Equipment Fund, third-party funding).

Bear in mind that the tender submission period lasts 20 days (or 40 days under international treaty jurisdiction). Furthermore, it takes some time to draw up the tender documentation and to evaluate incoming bids. In the event of a public call for tenders, altogether a time requirement of at least (!) three to four months from the initial contact with MO to the release of the order must be factored into the planning.

Therefore, particularly in the case of procurements financed through the Investment Fund, shortly after receiving notice about the amount of funding available, you should already start making prepara-



tions for the public call for tenders so that the movable capital asset can realistically be delivered and put into operation by the end of the year. The Investment Fund budget is an annual budget that expires at the end of each year.

#### Tender documentation

The tender documentation drawn up jointly by you and MO must include the following information:

- The invitation to submit bids;
- The tender specifications document;
- The specifications sheet;
- The general terms and conditions of the University of Zurich for the purchase of goods and services;
- Other documentation, such as construction plans, etc.

MO provides templates for the necessary documentation on request. If you use your own templates, you must ensure that they comply with the legal standards and requirements of Canton Zurich.

#### Publication of call for tenders

MO requires a description of the good or service being put out for tender in order to publish the open invitation to submit bids in the official gazette of Canton Zurich (Amtsblatt des Kantons Zürich) and on the electronic tendering platform shared by the Confederation and the cantons ([www.simap.ch](http://www.simap.ch)). The description should be concise, but must contain all essential information. The tenderers should be able to ascertain from the product description whether their supply capabilities fit the good or service being put out for tender.

For public calls for tenders under international treaty jurisdiction (CHF 350,000 or higher excluding VAT), the product description must additionally be published in French.

#### Invitation to submit a bid

The “invitation to tender” document summarizes all key information relevant to tenderers, such as contact addresses, closing submission deadline, eligibility and award criteria, stipulated validity period of the offer, delivery address, desired delivery date, etc. The document also lists key procedural rules, such as a prohibition of bidding rounds, adherence to submission deadlines, etc. The “invitation to tender” document is drafted by MO.

#### Tender specifications document – definition of award criteria (eligibility and award criteria)

The tender specifications document is the most important element of the tender documentation. The eligibility criteria for tenderers (suitability criteria that refer to the bidder!), the exact technical specifications of the good to be procured and the award criteria (evaluation criteria that relate to the offered good!) all must be precisely defined in the document. Award criteria must be non-discriminatory and are to be custom-drafted for each award of a contract. A precise description of the technical specifications is extremely important because the specifications of the product to be procured may not be altered once the call for tenders has been issued (prohibition of negotiations!).

**SVO § 22: Eligibility criteria:** *The contracting authority sets objective criteria and stipulates the evidence that must be provided in order to evaluate the tenderers. The eligibility criteria particularly concern a tenderer’s professional, financial, commercial, technical and organizational ability to supply the good or service in question.*



**SVO § 16: Technical specifications:** *The contracting authority sets out the required technical specifications in the tender documentation. Such technical specifications are: a) described in terms of performance rather than design and b) defined on the basis of international standards or, in the absence thereof, on the basis of technical standards employed in Switzerland. Requirements or references to a particular trademark or tradename, patent, design or type, specific origin or producer are not permitted, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that the phrase “or the equivalent” is included in the tender documentation. If bidders deviate from the aforementioned standards, they must provide proof of equivalency to the technical specifications. The contracting authority must not, in a manner that disables competition, solicit or accept any information from an enterprise that can be used to work up the specifications of a specific procurement if said enterprise could potentially have a business interest in that procurement.*

**SVO § 33: Award criteria:** *The tender is awarded to the most economically advantageous offer. The following criteria may be taken into account alongside the purchase price: quality, expediency, deadlines, technical value, aesthetics, operating costs, sustainability, creativity, customer service, apprentice training, infrastructure. Contracts for largely standardized goods may be awarded solely on the basis of the lowest-price criterion. If an external expert assisted in drawing up the tender specifications document, be aware that, as a rule, this prior involvement disqualifies that party from participating in that particular call for tenders.*

**SVO § 9: Prior involvement:** *Persons and enterprises that were involved in preparing the tender documentation or the tendering procedure to such an extent that they could influence the awarding of the contract to their advantage may not participate in the tendering procedure.*

#### Specifications sheet

The “specifications sheet” (usually an Excel spreadsheet) provides tenderers with a template on which to itemize and concisely present the main performance characteristics of the offered product. For the persons in charge of evaluating the offered product, the specifications sheet is advantageous because it obviates having to tediously glean the technical specifications from the written bid tendered. When drawing up a specifications sheet, tenderers must make sure to provide details on all formal requirements that will be evaluated on the basis of the award criteria. Combining the specifications sheets submitted by all tenderers into one big synoptic table enables good comparability of the individual bids and facilitates the scoring of tenderers’ offers during the evaluation phase.

#### During the call for tenders: From the submission of bids to the completion of the evaluation

**SVO § 17: Information:** *The contracting authority must promptly respond to queries about the tender documentation, provided the provision of such additional information does not confer impermissible advantages in subsequent stages of the tendering procedure. Essential information imparted to one bidder must simultaneously also be communicated to all other bidders.*

**SVO § 24: Submission of tenders:** *Tenders must be submitted in writing to the authority named in the call for tenders via hand delivery or postal service and must be in that office’s possession in complete form by the prescribed submission deadline. Tenders must be affixed with a legally binding signature. No tender may be altered after the deadline for submission.*

**SVO § 27: Unsealing of tenders:** *Tenders must remain sealed until the prescribed date for opening them, except under the single-tendering procedure or for the purpose of identifying a bid. Tenders submitted within the specified term must be unsealed by at least two representatives of the contracting authority. A written record of the proceedings of the unsealing of tenders must be drawn up and*



*must contain, at a minimum, the names of the persons present, the names of the tenderers, the submission receipt dates and the prices of the tenders, as well as any alternative tenders (variants) or partial tenders. All tenderers are granted access to the record of proceedings on request, at the latest once the contract has been awarded.*

**SVO § 31: Prohibition of bidding rounds:** *Negotiations between the contracting authority and tenderers over prices, discounts and alterations to the supplies or services specified in the tender are forbidden. Negotiations are permitted in the single-tendering procedure.*

**SVO § 28: Grounds for disqualification:** *There is a long list of grounds for disqualification. The main ones are when:*

- *A tenderer does not meet the required eligibility criteria;*
- *A tenderer has violated key formal requirements, in particular by not complying with the submission deadline, by failing to include a signature or by submitting an incomplete tender (...);*
- *A tenderer submits an abnormally low bid but fails to provide proof that than it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.*

**SVO § 29: Evaluation of tenders:** *Tenders are evaluated professionally and mathematically on the basis of uniform criteria. Third-party experts may be called in to consult on the evaluation. Obvious computational and orthographic errors shall be rectified. Afterwards, an objective bid comparison matrix shall be drawn up.*

#### Awarding of contract, judicial review and archiving

Once the tender evaluation has been completed, you, in consultation with MO, will nominate the winning tenderer. If so requested, the Executive Board of the University must ratify the awarding of the contract and release the funding for the good or service.

Once the Executive Board has issued its ruling on the awarding of the contract, MO will send written notice to the enterprises involved in the tendering procedure about the outcome of the call for tenders, summarily stating the reasoning and informing them about their right to appeal the decision. They then have 10 days to submit an appeal to the administrative court. During that time, you may settle the details of the procurement and draft the purchase contract with the selected supplier. Once the time limit for filing appeals has expired, you may finalize the purchase contract with the selected supplier. MO will publish the tender outcome in the official gazette of Canton Zurich (SVO § 35) and on the electronic tendering platform shared by the Confederation and the cantons ([www.simap.ch](http://www.simap.ch)).

All tender documents must be kept on file for three years (SVO § 42). The documents to be archived include the aforementioned tender documentation, all correspondence conducted throughout the entire tendering procedure, any decisions relating to the tendering procedure, and the tender ultimately chosen. The documents will be archived by MO.

Note: Movable Assets Office has based this brief primer on public procurement on the handbook for contracting authorities (Handbuch für Vergabestellen) published by the Canton Zurich Commission for Public Procurement (KöB – Kommission für das öffentliche Beschaffungswesen des Kantons Zürich).

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