



Procurement guideline for FDFA contractors (1/2)

This guideline is intended for contractors for the Federal Department of Foreign Affairs (FDFA) who in carrying out their mandate are required to award mandates to subcontractors using FDFA resources. Part IV of the budget (SOR budget) for mandates for project implementation awarded by the Swiss Agency for Development and Cooperation (SDC) is to be allocated as detailed in this Procurement guideline below.

Parts I-III of the budget (SOR budget) included in the contractor's bid were already awarded in accordance with the above competitive tendering procedure. This guideline therefore does not apply to subcontracts already awarded in parts I-III.

Choice of procedure

This procedure is based on the Federal Act of 21 June 2019 on Public Procurement (PPA, SR 172.056.1) and the Ordinance of 12 February 2020 on Public Procurement (PPO; SR 172.056.11).

Procurement principles

In enacting the Public Procurement Act (PPA), the federal government aims 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 well as
- 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. 2 PPA).



Art. 2 PPA

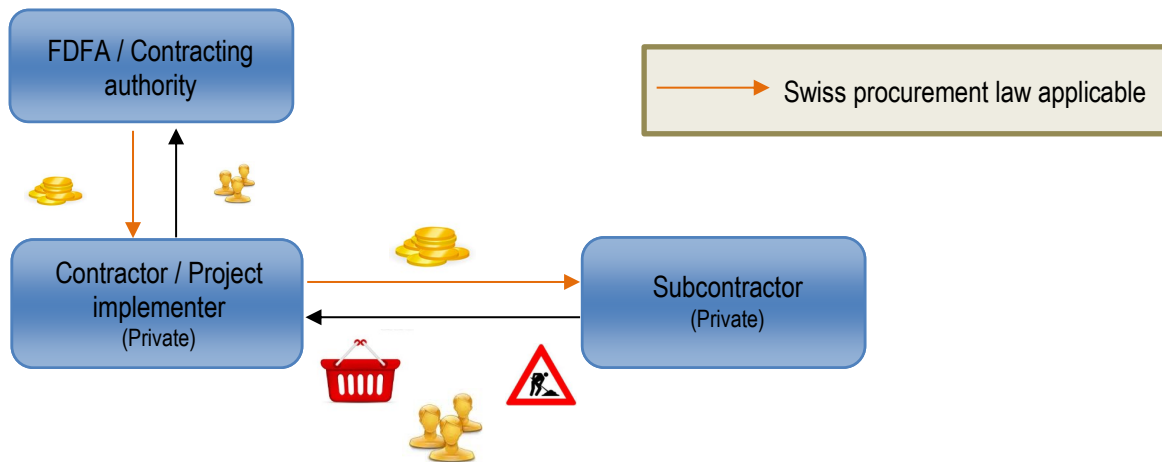
In choosing the appropriate award procedure (direct award procedure, invitation procedure, or open or selective tendering procedures), there are a number of things to consider:

- 1 WHO:** Is the contracting authority subject to federal procurement law?
- 2 DEFINITION:** Is this a public procurement transaction?
- 3 WHAT:** Is the object of procurement subject to federal procurement law?
- 4 HOW MUCH:** What is the value of the mandate?
- 5 EXCEPTIONS:** Are there any exceptions to the obligation to tender?
- 6 PROCEDURE:** Direct award procedure, invitation procedure, tendering procedure?

1 WHO:

Is the contracting authority or the contractor subject to federal procurement law?

The Federal Administration is subject to national and international statutory provisions on public procurement. As part of the central Federal Administration, the Federal Department of Foreign Affairs (FDFA) and its directorates must therefore comply with the statutory provisions¹. If a contractor carries out a procurement for the FDFA (contracting authority), Swiss procurement law stipulates that the same standards for procurement law apply as those that apply to the FDFA (contracting authority) itself.



¹ [Federal Act on Public Procurement](#) (PPA; SR 172.056.1) and [Federal Ordinance on Public Procurement](#) (PPO; SR 172.056.11).

2 DEFINITION: Is this a public procurement transaction?

A public procurement transaction is a transaction that involves...

... a (private) contractor/project implementer engaging a (private) subcontractor and using public funds to purchase service, goods or construction work in the fulfilment of their mandate.

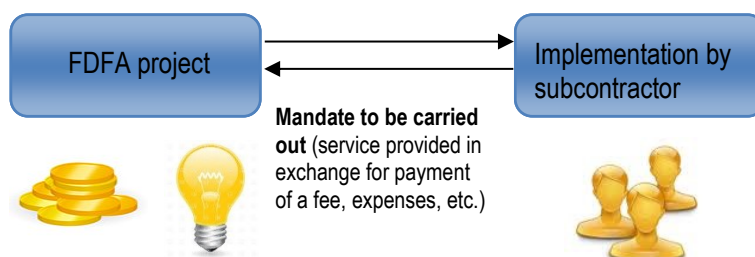
A public contract is a contract that is entered into by the contracting authority and the tenderer for the performance of a public task. It involves the payment of money in return for the supply of goods, work or services, with the characteristic supplies being provided by the tenderer (Art. 8 para. 1 PPA).



A contribution (see section 2.2) does not involve the exchange of goods, work or services and is thus not deemed to be a procurement transaction.

2.1 Definition of mandate

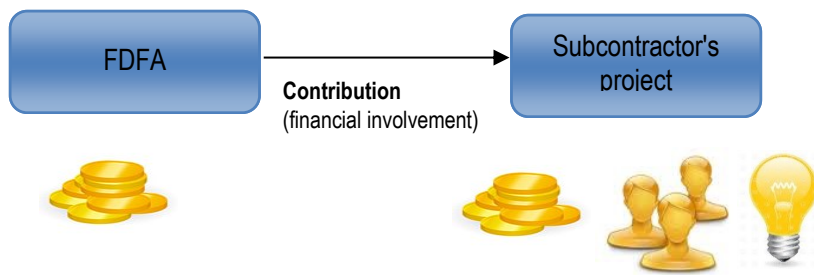
The subcontractor undertakes to perform a specific task (project/activity) for the FDFA. The contractor undertakes to compensate the subcontractor in full for all goods, work and services supplied and its expenditure in line with the budget.



- FDFA project
- FDFA funds 100% of the budget (fees and expenses)
- Intellectual property: FDFA
- VAT in CH: possible
- The Public Procurement Act (PPA) and Public Procurement Ordinance (PPO) apply

2.3 Definition of contribution

The FDFA undertakes to fund a specific part of the subcontractors' activity/project. The subcontractor undertakes to perform the activity/project by making an appropriate contribution or having a third party do so.



- Subcontractor's project
- The FDFA only funds a part of the budget
- Intellectual property: subcontractor
- No VAT in CH
- Subject by the Subsidies Act, not to the Public Procurement Act

3 WHAT:

Is the object of procurement subject to federal procurement law?

The Public Procurement Act specifies three different objects of procurement: services, supplies of goods, and construction work.

3.1 Mandate for services

A service provided by a bidder as part of an FDFA mandate is known as a service mandate

Irrespective of the type of service and mandate value, the procurement of services can fall within the scope of international treaties for which there is an appeal procedure. Decisions may also be appealed in respect of services falling outside the scope of international treaties where the mandate value exceeds the applicable threshold for invitation procedures already (see Procurement Manual part 2, decision tree on page 4 and 5).

3.2 Mandate for the supply of goods

Moveable goods are supplied under a mandate for the supply of goods.

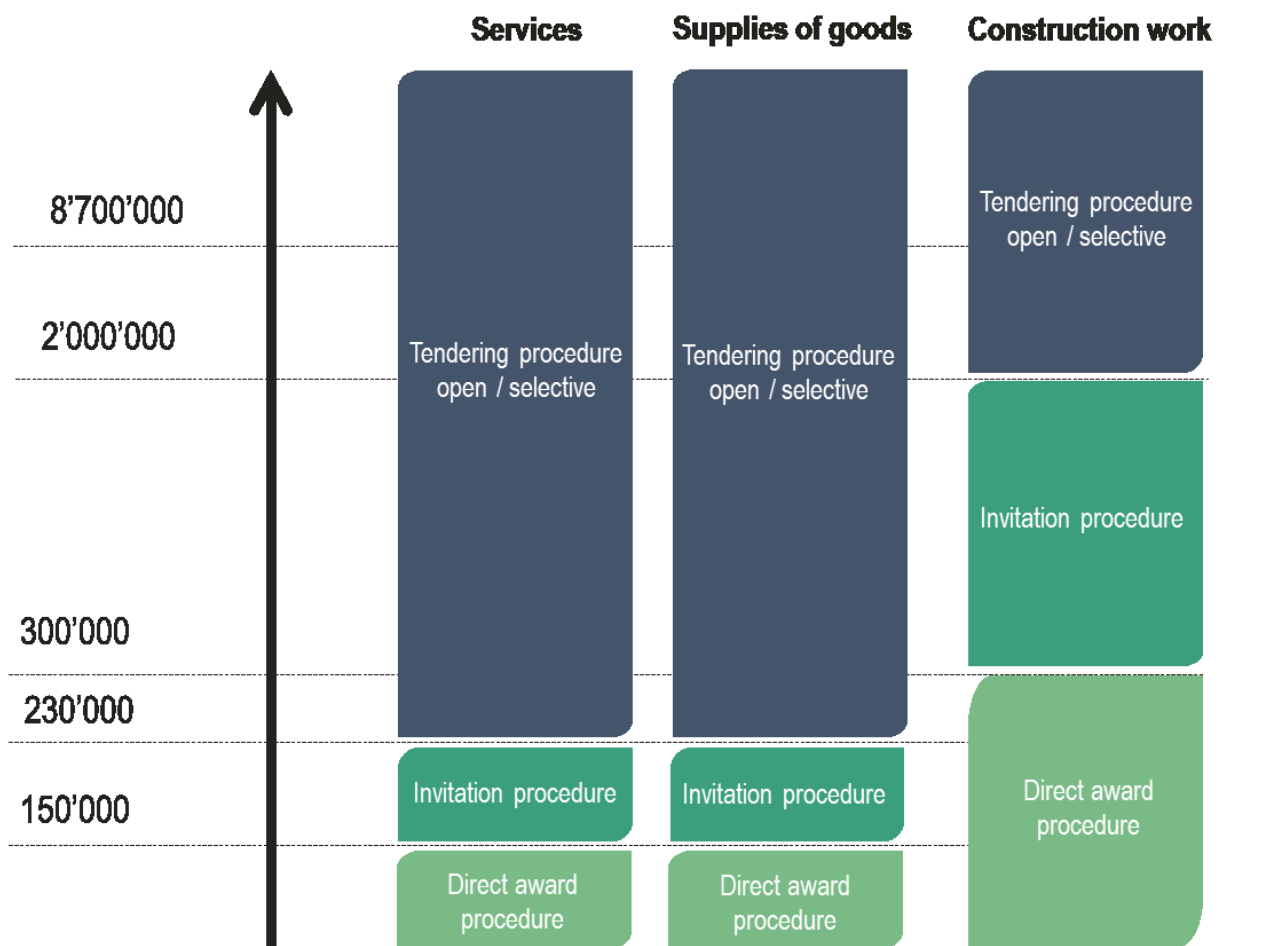
3.3 Mandate for construction work

Construction work for buildings and civil engineering services are provided under a mandate for construction work.

4 HOW MUCH: What is the value of a mandate?

4.1 Thresholds

The choice of procedure will depend on whether the value of the mandate reaches a particular threshold:



Mixed mandates comprise various supplies (supplies of goods and services, or construction work) 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 the PPA.

The different procurement procedures are described in more detail in section 6 of this document.

Increasing competition / avoiding conflicts of interest

Even below the legally defined thresholds, it is possible to choose a procedure that creates more competition. The contractor is responsible for taking the necessary steps to raise the overall level of competition. In the case of local procurement (invitation procedure, direct award procedure), contractors are recommended to convert the thresholds listed above into the local currency and adapt them to the local circumstances. This lowers the thresholds, which create more competition and helps lower the risk of conflicts of interest. Better competition significantly helps to reduce instances of corruption.

4.2 Mandate value

Determining the value of the mandate

The contractor is responsible for estimating the probable value of the mandate. When estimating the value of the mandate, all of the goods, work and services to be put out to tender, as well as remuneration that is closely related materially or legally (*see below), must be taken into account. All remuneration components must be taken into account, including extension options and options for subsequent contracts, as well as all expected premiums, fees, commissions and interest, excluding value added tax.

The mandate value must be calculated carefully, taking into account any subsequent mandates. A public contract may not be split up in order to circumvent the provisions of the Act.

*) Goods, work or services that are connected in material or legal terms

In principle, all goods, work and services which are closely related in material or legal terms must be included in the mandate value.

The following questions will make it easier to assess which services are related in legal or material terms:

- Is the substance of the goods, work or services comparable?
- Is the purpose of the goods, work or services comparable?
- Is the method of supplying the goods, work or services comparable?
- Will the goods, work or services be supplied by the same party and would an allocation of responsibilities be inappropriate? Is comparable expertise required to provide the services?

Fixed term contracts / unlimited contracts

The total value is the determining value for **fixed term** contracts.

The monthly value multiplied by 48 is the determining value for **unlimited** contracts.

In the case of mandates for goods, work or services required on a recurring basis, the mandate value is calculated on the basis of the remuneration paid for such goods, work or services during the last 12 months or, in the case of an initial mandate, on the basis of the estimated requirements over the next 12 months.

Maximum contract duration

Contracts for goods, work or services required on a recurring basis may be concluded for a maximum of five years. A longer contract term is only possible in justified cases. The contract period must not exceed the project period.

5 EXCEPTIONS:

Are there any exceptions to the obligation to tender?

[\(see Federal Act of 21 June 2019 on Public Procurement \(PPA, SR 172.056.1\), art. 10 and 21\)](#)

Deviations from the prescribed competitive tendering procedures are only permitted in the exceptional circumstances set out in the legislation. It will be necessary to check whether any exception applies.

Obligation to provide justification

Direct awards (and other exceptions to the legally prescribed procedure) of service procurements with a value of CHF 150,000 or above, are subject to the obligation to provide justification by the contractor. In any case, the justification must be submitted to the FDFA before the contract is concluded.

If a different procedure is chosen due to a legal exception (i.e. direct award procedure above the thresholds, equivalent local procedure or invitation procedure instead of tendering procedure)

- The contractor must prepare a justification for the legal exception. For this purpose, he/she can use the form "Justification for the direct award procedure" (available on the Internet or on request from the Cooperation Office) or prepare his/her own justification document.
- The form must be checked by a lawyer of the contractor (or by an external lawyer) and legally signed by the contractor.
- The contractor submits the form to the FDFA contract partner (Cooperation Office/Representation or HQ)
- The FDFA contract partner confirms the receipt, checks the plausibility and signature of the justification for the exception and keeps the form with the documents of the main mandate. He submits the form to the internal audit or other control bodies on request.

Examples:

- Mandates that are awarded on the basis of a valid international treaty between Switzerland and a partner country concerning a joint project. For local procurements or other exceptional procedures, a corresponding regulation in the project agreement must be mentioned and defined (rules of the partner country or specially defined rules), which must be respected. For direct award procedures, the contractor must be explicitly mentioned in the project agreement.
- If an equivalent, local procedure in the recipient state is observed for the award of the mandate within the framework of international cooperation (Art. 10h, para. 4).
- Only one suitable tenderer on the market can be considered and there is no adequate alternative: market analysis for the justification of an exception according to art. 21 para. 2 let. c PPA.
- On account of unforeseeable events (natural disaster, pandemic, etc.), the urgency of the procurement is such that it is impossible to adopt a competitive tendering procedure.
- A change of tenderer for goods, work or services to replace, supplement or extend supplies already provided is not possible for economic or technical reasons, would cause considerable difficulties or would entail substantial additional costs; art. 21 para. 2 let. e PPA).

6 PROCEDURE:

direct award procedure, invitation procedure, tendering procedure?

6.1 Direct award procedure

Under the direct award procedure the contractor awards a mandate directly to a tenderer (no competition).

Procedure in the case of direct awards below the legal threshold

- Collect bids (it is advisable to collect bids to boost competition)
- Evaluate bids and award mandate to one of the tenderers
- Conclusion of contract

Procedure in the case of direct awards subject to the invitation or tendering procedure

Where the value of a mandate for supplies of goods and services exceeds CHF 150,000, or CHF 300,000 for construction work, the exception must be substantiated (see section 5).

6.2 Invitation procedure

Under the invitation procedure the contractor decides which tenderers are to be invited directly to submit offers. Wherever possible the contracting authority must obtain three tenders.

Course of action for invitation procedures

- The contractor invites the tenderers of its choice to submit tenders directly.
- Prepare the terms of reference incl. criteria
- Send an invitation to at least 3 eligible tenderers
- Obtain bids (recommended time period for submission at least 14-21 days)
- Evaluate the tenders and produce a brief evaluation report (must be comprehensible for third parties)
- Award the mandate by notifying the tenderer in writing
- Conclusion of the contract

Guidelines

- There must be genuine competition between tenderers (i.e. all tenderers must have received the same information concerning the submission of tenders).
- The bids submitted must be evaluated on the basis of objective criteria (qualitative, technical and economic/price criteria) and documented in a transparent manner.
- The mandate must be awarded to the tenderer deemed to have submitted the most advantageous tender based on the evaluation carried out.

6.3 Tendering procedure (open or selective procedure)

A tendering procedure is required for mandates for the supply of goods and services with a value equal to or exceeding CHF 230,000 and for construction work mandates with a value equal to or exceeding CHF 2,000,000. There are two types of tendering procedures: the open procedure and the selective procedure.

Open tendering procedure (= one-step procedure)

The contractor launches a public call for tenders for the planned mandate on www.simap.ch. The contractor sends a request to simap support (support@simap.ch) and submits the SDC main contract. Simap then authorizes the creation of a user account as "contracting authority" on www.simap.ch.

The call for tenders is open to all tenderers.

- Invitation to submit a tender (For deadlines see chapters 7 and 8 of the Public Procurement Act)
- Award decision
- Publication of the award (see chapters 7 and 8 of the Public Procurement Act)

- Conclusion of the contract

Selective tendering procedure (= two-step procedure)

Step 1: Invitation to submit expression of interest (EOI) on www.simap.ch.

- All tenderers may submit an EOI.
- Minimum deadline to submit an EOI: 25 days
- Check suitability on the basis of mandatory criteria and weighted eligibility criteria

Step 2: All suitable tenderers are invited to submit a bid

- Invite at least three tenderers to submit a bid
- Minimum deadline to submit a bid: see chapters 7 and 8 of the Public Procurement Act
- And so on...follow the same steps as the open procedure



Procurement guideline for FDFA contractors (2/2)

Competitive tendering procedure: invitation procedure and tendering procedure (open or selective procedure with publication on www.simap.ch)

This document lays down rules for implementing the invitation or tendering procedure in practice. It includes the following procedural stages:

- 1 NEEDS ANALYSIS
- 2 CREATING THE DOCUMENTS
- 3 PUBLICATION OF THE MANDATE
 - 3A INVITATION PROCEDURE
 - 3B TENDERING PROCEDURE
- 4 EVALUATION AND AWARD OF CONTRACT
- 5 DEBRIEFING AND CONCLUSION OF THE CONTRACT

1 NEEDS ANALYSIS

1.1 Selecting the correct award procedure

For the purposes of selecting the correct award procedure (direct award procedure, invitation procedure, or open or selective tendering procedures), please refer to 'Choice of procedure' in Part 1 of the Procurement Manual. There is an obligation to provide justification regarding mandates awarded under the direct award procedure, or under any other procedure prescribed by law, which, in the case of procurements of services or supplies of goods have a value equal to or greater than CHF 150,000 or, in the case of construction work, have a value equal to or greater than CHF 300,000 (see chapter 5 of the Procurement Manual Part 1). The justification must be submitted to the contractual partner of the FDFA (Cooperation Office/Representation or Headquarters) prior to the conclusion of the contract.

1.2 Market and tenderer analysis

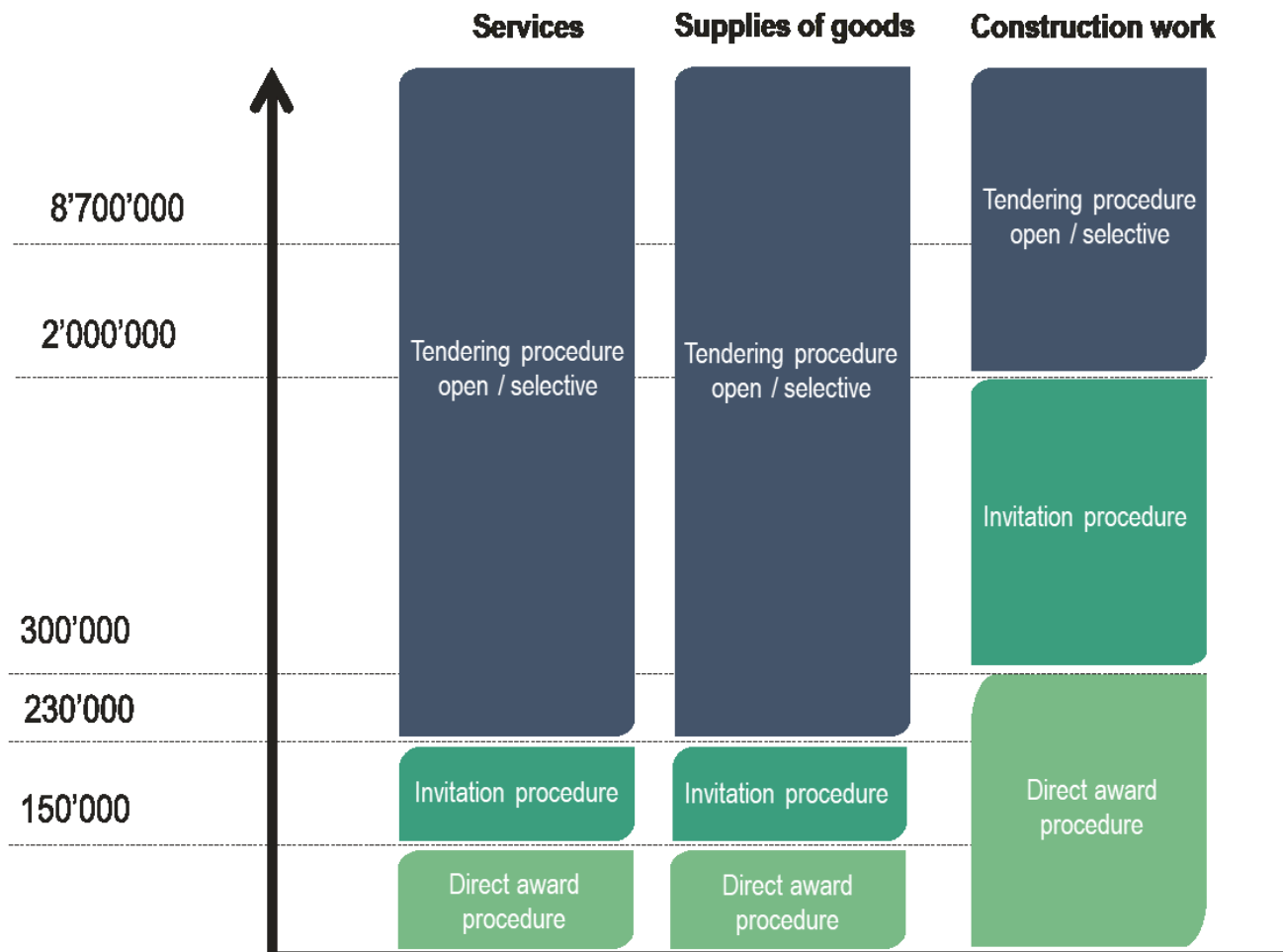
- How many potential tenderers could supply the service or product required?
- Based on our requirements, which tenderers would be eligible to perform this mandate?
- What organisational structure should the prospective tenderer have (individual tenderer, consortium, subcontractor): bidding consortia, subcontractors and multiple tenders are permitted unless the invitation to tender or tender documents explicitly preclude or limit this option.

- Has a market analysis been undertaken? Is this a new or follow-up procurement? If this is a follow-up procurement, please note, in particular, section 1.5 Prior involvement on dealing with market clarifications prior to public tendering procedures and tenderers with a prior involvement.

1.3 Procurements within or outside the scope of international treaties

Whether a procurement falls within or outside the scope of international treaties will depend on the mandate value and the type of goods or services to be supplied.

Threshold – mandate value



Decision tree: within or outside the scope of international treaties?

	Within the scope of international treaties	Outside the scope of international treaties (Annexe 5 para 1 5 let. d – IC, CEE, HA, HSD)	Outside the scope of international treaties
Goods, work or services to be procured (Annexes 1–3 and 5 PPA)	Services: as set out in Annex 3 PPA	Public contracts (services, supplies of goods, construction work) for international development cooperation and international cooperation with Eastern Europe, humanitarian aid and peace-building and human security	Services: all services other than those described in Annex 3 PPA
	Supplies of goods: <u>all goods</u> supplied by civilian contracting authorities, as set out in Annex 2 PPA		Supplies of goods Supplies other than those described in Annex 2 PPA
	Construction work: all construction work as set out in Annex 1 PPA		Construction work: all construction work other than that described in Annex 1 PPA
Right of appeal and time limit for lodging an appeal	YES 20 days from date of publication on www.simap.ch	NO	YES, right of appeal 'light' Secondary legal review 20 days from date of publication on www.simap.ch Action for damages may be brought
Conclusion of the contract	Only once the appeal deadline has expired and no appeal has been submitted	Permitted once the contract has been awarded	Permitted once the contract has been awarded

1.4 Impartiality (conflict of interest) (Art. 13 PPA; Art. 3 PPO)

Individuals who award or manage mandates, or exert any influence over the content thereof, must be impartial and not have close ties with tenderers or contractors. They should make a declaration of impartiality in writing in relation to the project concerned, in which they undertake to notify their line manager or the project manager immediately in writing of any close ties to tenderers participating in a procurement procedure in which they are involved. Where a conflict of interest or the appearance of a conflict of interest exists, the contractor shall also inform the contractual partner of the FDFA without delay.

1.5 Prior involvement of prospective tenderers

Prior involvement is deemed to apply if a tenderer had the opportunity to gain knowledge that gives it a head-start in the procurement process, for example (i) through its involvement in preparing the invitation to tender or tender documents, (ii) by carrying out a feasibility study or preliminary project, or (iii) through personal dealings with the awarding office.

Prior involvement is not unlawful per se, but only if it gives the tenderer a competitive advantage, for example because (i) it has the ability to shape the award procedure to its advantage, or (ii) enables it to submit a better bid. **If a prior involvement is deemed to be unlawful**, the tenderer concerned (the company and its employees) must be disqualified from the procedure, for example in the Tender Document.

Prior involvement is deemed to be lawful if (i) the tenderer's involvement and the advance knowledge gained are immaterial, or (ii) a level playing field can be established by providing the relevant information (for example 'Market clarification', 'feasibility studies') to all tenderers* along with the tender documents and allowing tenderers sufficient time in which to prepare their bids. Any experts or companies which were involved in preparatory work and are not excluded from further award procedures must be named in the tender documents and the extent of their involvement disclosed.

*) In compliance with data protection rules, any sensitive data or confidential information must be redacted in the relevant documents.

1.6 Open or selective procedure

Whether to opt for an open or selective procedure will depend on various factors, including the anticipated number of bids, the time available, the time and work involved for tenderers, confidentiality, etc.

Further information on the two types of procedures can be found in the Procurement Manual Part 1, under section 6.3 Tendering procedure (open or selective procedure).

2 CREATING THE DOCUMENTS

2.1 Determining eligibility criteria, technical specifications and award criteria

In preparing the tender documents, the required eligibility criteria, technical specifications and award criteria, together with the relevant rankings and weightings, must be determined. All criteria and the relevant weightings must be specified in the invitation to tender. The evaluation framework should also be disclosed.

No adjustments may be made to the criteria once the tendering procedure is under way.

2.2 Eligibility criteria, technical specifications and award criteria

2.2.1 Eligibility criteria

- a) **Mandatory eligibility criteria** (YES/NO) apply *to tenderers*. The eligibility criteria ensure that tenderers have the required expertise, technical skills, financial standing, operational capability and business capacity, enabling them to give a fully comprehensive warranty as to the performance of the mandate. The documentary evidence required must be specified. If the required evidence is not provided or the eligibility criteria are not met in full, the bid will not be given further consideration.
- b) Under the (two-stage) selective procedure with restricted participation, the eligibility criteria may comprise mandatory criteria (YES/NO) and also include **assessable, weighted criteria**.

Discriminatory criteria or criteria that restrict competition on the market are not permitted.

2.2.2 Technical specifications

Mandatory criteria (YES/NO) relate to the *item(s) to be procured*. The technical specifications set out the mandatory requirements for the relevant products or services. These are intended to ensure that the minimum requirements applying to the product or service (quality, function, safety, measurements, international standards, Swiss or equivalent standards, etc.) are met.

2.2.3 Award criteria

The award criteria are the criteria *used to evaluate the product(s) and/or service(s) offered under the bid* and determine the relevant requirements. The contract is awarded to the most advantageous tender. Alongside the price and quality of the services or goods to be supplied, it is important to consider criteria such as **appropriateness, timing, technical merit, cost-effectiveness, life cycle costs, aesthetics, sustainability, plausibility of the bid, reliability of the price, creativity, customer service, terms of delivery, infrastructure, innovative content, functionality, service readiness, expertise, and efficiency of the methodology**. The tender documents must include information on the award criteria and relevant weightings.

The award criteria must be clearly defined, comprehensible, assessable, transparent, and given an appropriate weighting. The following **criteria are not permitted**: award criteria that are overly restrictive or discriminatory and inconsistent with the principle of equal treatment (e.g. location, residence for tax purposes) and subjective criteria such as the general impression made by the bid, previous experience of the tenderer (whether good or bad).

Criteria should be evaluated in accordance with the following **principles**:

- **Transparency**: it should be possible for non-experts to understand the evaluation model selected.
- **Equal treatment**: the model selected should not favour a particular tenderer.
- **Cost-effectiveness**: any evaluation model (price/award criteria) selected must ensure that the contract is awarded to the tenderer submitting the most advantageous bid.
- **Competition**
- **Sustainability**: social, environmental and economic aspects

Evaluation of qualitative award criteria

It is important to ensure that the evaluation system is **self-explanatory, meaningful and transparent** and is explained clearly and concisely in the tender documents.

Price evaluation

Price must always be given as one of the award criteria. The price weighting must not be less than 20% of the overall score (decision of the Federal Administrative Court).

The invitation to tender must specify the price weighting and the method used to evaluate prices (price calculation formula).

2.3 Creating the tendering procedure timetable

The tender documents must specify the various milestones in the tendering procedure. Due consideration should be given, for example, to the following timing issues:

- Minimum time allowed for submissions prescribed by law
- Availability of members of the evaluation panel
- Allowing sufficient time to open, check, adjust and evaluate the bids and for any presentations to be given
- The time required for bids submitted at the representations abroad to be received at the location where they will be opened (see section 3A.4).
- Procedure for appeals (public contracts falling outside the scope of international treaties only).

2.4 Core and optional supplies

The core goods, work or services to be supplied and any optional supplies should be clearly described and evaluated.

Core supply

The core supply refers to the goods, work or services to be supplied by the tenderer once the contract has been awarded.

Optional supplies

Optional supplies mean goods, work or services that tenderers may be required to supply in future or if the scenario described in the invitation to tender arises.

The contractor may reserve the right in the invitation to tender to award a contract to supply optional goods, work or services to the same tenderer. He must specify the relevant quantities, the estimated time frame and/or the conditions under which this optional supply will be required. In evaluating bids, he must take any optional supplies into consideration for the purpose of determining the value of the mandate and the likelihood that the optional supply will be required. The tenderer does not have any enforceable right to supply the optional goods, work or services concerned, but must make the supply if this is required by the contractor subject to the terms and rates set out in the bid.

2.5 Lots and partial tenders

The contractor may procure all the goods, work or services as a single supply or as partial supplies (lots). However, in dividing up the supply the contractor may not circumvent the prescribed procedure or demonstrate any preference for individual tenderers. The individual lots must be described in the invitation to tender (principle of transparency).

Where the contractor has divided a supply into lots, tenderers are free to choose whether to submit a complete tender for all the goods, work or services to be procured and/or a tender for one or more lots. Contractor must specify any variations from this rule in the invitation to tender.

If the contractor wishes to reserve the right only to award a partial mandate to tenderers who have submitted a complete tender for all goods, work or services, or to require the tenderer to work with third parties, this must be specified in the invitation to tender.

2.6 Variants

A variant is any tender that allows the aim of the procurement to be achieved in a way that is different from that envisaged by the contractor (the 'reference bid'). Any variant must differ from the reference bid in terms of content and the supply offered. Tenderers are free to submit a variant in addition to the reference bid. In duly substantiated exceptional circumstances, the contractor may restrict or exclude this option in the invitation to tender. Tenderers submitting a variant must always submit a reference bid alongside the variant. If no reference bid is submitted, the tender may be disregarded.

2.7 Interviews/presentations

Interviews or presentations may form part of the procurement process. The invitation to tender must state clearly that interviews or presentations may be required. In order to maintain confidentiality, tenderers may not be invited to attend an interview or give a presentation at the same time as other tenderers.

Interviews should be prepared thoroughly and preferably scripted. Minutes of the interview should be kept and record the results of the interview (whether positive or negative). The minutes should be signed by all parties present.

2.8 General terms and conditions (GTC)

The applicable general terms and conditions (GTC) form part of the tender documentation and must be appended to the tender document.

3 PUBLICATION OF THE MANDATE

3A INVITATION PROCEDURE

3A.1 Targeted invitation to tenderers

Under the invitation procedure, the contractor selects tenderers it wishes to invite directly to submit a bid without issuing a public invitation to tender (further information is provided in sections 6.2.1 and 6.2.2 of Part 1 of the Procurement Manual). If possible, at least three bids should be obtained from different language regions (applies to mandates in Switzerland).

3A.2 Expressions of interest/obtaining documents

The invited tenderers should be asked to submit an expression of interest. Any tenderers that express an interest through the mandates platform should subsequently be sent the documents appended to the terms of reference: general terms and conditions, bid forms, etc.

3A.3 Deadline for questions

Tenderers must be allowed a reasonable period of time (at least 5 days from the publication date) to send general questions by email regarding the terms of reference.

The questions and responses, in anonymised form, must be emailed to all tenderers that have expressed an interest by the deadline specified in the terms of reference.

3A.4 Deadline for submitting bids

Tenderers must be allowed a reasonable period of time (not less than 14 days) in which to submit their bids. Under the invitation procedure, bids may be submitted by email. We recommend sending a confirmation that the bid has been received within 2 days.

3A.5 Confidentiality

All documents submitted (bids, accompanying documents, etc.) and the evaluation results must be treated as confidential. Bids must be kept under lock and key.

3B TENDERING PROCEDURE

3.1 Publication

All invitations to tender (open or selective procedure) must be published on www.simap.ch (Système d'information sur les marchés publics en Suisse), an electronic public procurement platform shared by the Confederation, cantons and communes. The contractor sends a request to simap (*see below) (support@simap.ch). After authorization the contractor sets up an account him/herself as 'contracting authority' on www.simap.ch. The contractor is responsible for the registration and for publishing the invitation to tender.

*) To set up a user account, contractors must be able to show a contractual agreement with the FDFA (for example project implementation mandate). This is to be sent together with the request on demand by the simap support office to: support@simap.ch.

3B.2 Obtaining documents

Once the invitation to tender has been published, tenderers can download all the additional documents (tender document, general terms and conditions, bid form, etc.) directly from www.simap.ch. The tender document can include the following information:

The tender documents for the specified project can be downloaded from www.simap.ch under 'Running procedures', 'Confederation'. In order to do so, you first have to register in the aforementioned project. You will then be able to log in and use the password that you will have been sent by email to download the required documents.

3B.3 Deadline for questions

Tenderers must be allowed a reasonable period of time (approx. 14 days) in which to ask questions regarding the tender document and the invitation to tender in general.

Registered tenderers will be able to access the forum for the invitation to tender concerned. Tenderers may anonymously submit questions on the forum within the time period specified in the tender documents.

The date on which the responses will be published must also be specified in the tender documents. After publication, the full set of questions and answers are available to all the tenderers.

4 EVALUATION AND AWARD OF CONTRACT

4.1 Opening bids

In any competitive tendering procedure, at least two representatives of the contracting authority should verify that bids were received on time and that they are complete. In the case of bids that were submitted late, the unopened envelope must be copied and the copy placed in the records. The unopened envelope must then be returned to the sender immediately.

The minutes recording the opening of tenders should include the following information:

- The names of those present
- The names of the tenderers
- The exact date and time on which the bid was received
- Any variant bids
- The total price applying to each bid

Please note:

In opening bids, it is absolutely essential to adhere to the second-pair-of-eyes principle and exercise due care in preparing the minutes. The individuals opening the bids do not need to be members of the evaluation panel. However, it is essential to ensure that they have signed a statement confirming that they are impartial. The minutes recording the opening of the bids must, as a minimum, include the information set out above. Minutes that contain incorrect or incomplete information may have a serious impact on the subsequent evaluation, given that any tenderer that has submitted a bid may request access to the minutes recording the opening of bids once the award decision has been made. For reasons of confidentiality, only the above-mentioned information (cf. Art. 37, para. 2 PPA) may be disclosed.

Access to bids – confidentiality

Once the bids have been opened, the documents must be stored somewhere with a locking device. Only members of the evaluation panel are authorised to access and discuss bids.

4.2 Evaluating bids (open procedure)

Bids under open procedures are evaluated in three stages.

Stage 1: verification of tenders – formal requirements (Art. 38 PPA)

The tender documents must fully comply with the formal requirements specified in the tender documents, otherwise the bid will not be considered.

The following aspects should be verified at this stage:

- **Deadline:** was the deadline for submitting bids met?
- **Completeness:** is the bid submitted complete? Have the original documents and required number of copies been provided? Has all the required documentary evidence been provided?
- **Form:** has the bid been structured as specified in the tender documents?

If certain formal requirements are not met, it will be necessary to consider whether the bid should be excluded from further consideration. The contracting authority may ask the tenderer to correct its bid. The request and the relevant response should be recorded in writing. However, excessive adherence to form and detail is unnecessary.

Stage 2: assessing the mandatory criteria for the bid, i.e. the eligibility criteria and technical specifications

All the eligibility criteria and technical specifications, as set out, must be met and evidenced unconditionally on submission of the bid, and may not be subject to change. Otherwise the bid will not be considered.

Only tenderers and bids that satisfy all the formal requirements and mandatory criteria may be evaluated on the basis of the award criteria. The contracting authority may ask tenderers to make minor corrections to eligibility criteria and technical specifications. The request and the relevant response should be recorded in writing. Corrected bids that do not unconditionally satisfy all mandatory criteria must be excluded from further consideration. However, excessive adherence to form and detail is unnecessary.

Stage 3: Checking compliance with the award criteria

Once they have been corrected and can be compared objectively, bids should be evaluated on the basis of the award criteria and evaluation scale specified in the tender documents. As a general rule, each member of the evaluation panel should evaluate bids individually on the basis of the award criteria and record the reasons for assigning their scores in writing.

Prices should be evaluated using the formula specified in the tender documents.

4.3 Evaluating expression of interest and bids (selective procedure)

As outlined in section 1.6 'Open or selective procedure', bids under the selective procedure are evaluated in two stages.

Step 1: Invitation to submit expression of interest (EOI) on www.simap.ch. All tenderers may submit an EOI.

Step 2: All eligible tenderers are invited to participate. At least three tenderers should be invited to submit a bid. Bids are opened in accordance with section 4.1.

Step 1: evaluation of requests to participate

Requests to participate are evaluated in 3 stages:

Stage 1: evaluating requests to participate – formal requirements

Any request to participate that does not fully comply with the formal requirements specified in the participation documents will not be considered.

The following aspects should be verified at this stage:

- **Deadline:** was the deadline for submitting request to participate met?
- **Completeness:** is the request to participate submitted complete? Have the original documents and required number of copies been provided? Has all the required documentary evidence been provided?
- **Form:** has the request to participate been structured as specified in the participation documents?

If certain formal requirements are not met, it will be necessary to consider whether the request to participate should be excluded from further consideration. However, excessive adherence to form and detail is unnecessary.

Stage 2: assessing the mandatory criteria for the request to participate, i.e. the eligibility criteria and technical specifications

All the eligibility criteria and technical specifications, as set out, must be met and evidenced unconditionally on submission of the bid, and may not be subject to change. Otherwise the request to participate will not be considered.

Only tenderers that satisfy all the formal requirements and eligibility criteria may be evaluated on the basis of the weighted eligibility criteria. All other tenderers will be disqualified.

Stage 3: selecting participants (pre-qualification)

The number of participants, as defined in the participant documents, with the highest scores will be invited to submit their bids (stage 2).

Step 2: evaluation of overall bid (technical and financial bids)

Technical bids should be evaluated in line with Stage 3 under the open procedure (see section 4.2).

4.4 Adjustment of tenders

The contracting authority may work with the tenderers to adjust the tenders with regard to the goods, work or services and the arrangements for their provision in order to determine the most advantageous tender, if

- this is the only way to clarify the mandate or the tenders or to make the tenders objectively comparable; or
- changes to the supply are required on objective and material grounds. However, tenders may not be adjusted in such a way that the characteristic supply or the potential group of tenderers changes as a result.
- Prices may only be adjusted if both of the above conditions are met.

Any tenderers that have a realistic chance of being awarded the contract should be given the same opportunity to adjust their bids (principle of equal treatment). The specific aspects to be adjusted (award criteria) in relation to their bid should be itemised and, more generally, they should be informed of the award criteria to be adjusted in relation to other tenderers (principle of transparency).

The results of the adjustments should be recorded in the evaluation report. We generally recommend that any such adjustments be recorded in writing. If any adjustments are communicated verbally, minutes should be prepared recording the following information, which must be signed by all individuals present:

- the names of those present;
- the components of the bid being negotiated;
- the outcome of the adjustments.

In addition, no information relating to competing bids should be disclosed to participating tenderers (principle of confidentiality).

NB: all adjustments must always be made before the contract is awarded. No further adjustments may be made to bids once the award decision has been made.

4.5 Evaluation report

An evaluation report must be produced for each tendering procedure. The evaluation report should cover all the stages involved in the evaluation, including any adjustments. The evaluation report should be drawn up in such a way as to enable any third party (e.g. internal auditors, the courts) to understand the decision made on the basis of the evaluation. The evaluation process should therefore be set out as clearly and comprehensibly as possible and additional information provided where necessary.

4.6 Awarding of contract

Once the evaluation report has been checked and signed by all parties, the award decision may be published.

N.B.: no further adjustments or changes may be made to bids at this stage.

The contract must be awarded to the most advantageous tender with the highest scores. Scores are based on the award criteria set out in the tender document (see section 2.2.3).

4.7 Publication

Under the invitation procedure the award decision should only be notified by means of a letter of refusal. The decision should not be published on www.simap.ch.

Awards (open or selective procedure) must be published on www.simap.ch (Système d'information sur les marchés publics en Suisse), an electronic public procurement platform shared by the Confederation, cantons and communes. The contractor is responsible for publishing the award.

5 DEBRIEFING AND CONCLUSION OF THE CONTRACT

5.1 Debriefing

The awarding office must provide the following information to unsuccessful tenderers immediately upon request:

- the award procedure used;
- the name of the successful tenderer;
- the price quoted for the successful bid or the lowest and highest prices quoted for the bids involved in the award procedure;
- the main reasons why the tenderer was unsuccessful;
- the key features and advantages of the successful bid.

5.2 Right of appeal and conclusion of contract

Prior to issuing the invitation to tender it is essential to establish whether the procurement falls within or outside the scope of international treaties. Information to this effect should be included in the published invitation to tender. Further information is provided in section 1.3 'Procurements within or outside the scope of international treaties'

If the procurement falls outside the scope of international treaties the contract may be concluded with the tenderer once the award has been published.

If the procurement falls within the scope of international treaties, it is essential to wait until the period for bringing an appeal, i.e. 20 (calendar) days from the date of publication on simap, has elapsed before concluding the contract.

5.3 Retention of tender documents and bids (Art. 49 PPA)

Successful and unsuccessful tenderers

The contractor must retain the relevant documents relating to the award procedure for a minimum period of three years from the date on which the final award decision is made.

The documents to be retained include:

- a. Invitation to tender published on simap
- b. Tender Document
- c. Minutes recording opening of bids
- d. All correspondence relating to the award procedure
- e. Records relating to adjustments to bids
- f. Any other documents published on simap (or other decisions)
- g. Successful bid
- h. Information ensuring traceability in relation to electronic procurement processing

The documents relating to the successful bid and the successful bid itself must be retained for a period of 10 years from the date on which the final award decision is made.