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Federal Act on Public Procurement (PPA)

of 21 June 2019

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.

¹ SR 101

² BBl 2017 2175

³ SR 0.172.052.68

⁴ SR 0.632.31

⁵ BBl 2017 1851

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;
- 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

⁶ SR 220

1964 on Employment in Business, Trade and Industry⁷ 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 1997 on the Organisation of the Government and the Administration⁸ 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

⁷ SR 822.11

⁸ SR 172.010

⁹ SR 783.0

- 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.

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 1990 on Financial Assistance and Subsidies¹⁰;
- 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;
- h. procurements:
 1. within the framework of international humanitarian emergency assistance and agricultural and nutritional support,
 2. in accordance with the specific procedures or conditions set out in an international agreement regarding the stationing of troops or the joint implementation of a project by signatory states,
 3. carried out in accordance with the specific procedures or conditions of an international organisation or co-financed by international financial assistance, loans or other forms of assistance if the procedures or conditions applicable would be incompatible with this Act,
 4. within the framework of international cooperation, provided that an equivalent local procedure is followed in the recipient state;
- i. public pension funds of the Confederation.

² The contracting authority has to prepare documentation on each contract awarded in accordance with paragraph 1 letter h.

¹⁰ SR 616.1

- ³ In addition, this Act does not apply to the procurement of goods, work or services:
- a. from tenderers that have an exclusive right to provide such goods, work or services;
 - b. from other, legally independent contracting authorities which are themselves subject to procurement law, provided that these contracting authorities do not provide these goods, work and services in competition with private tenderers;
 - c. from dependent organisational units of the contracting authority;
 - d. from tenderers over which the contracting authority exercises control identical to the control over its own units, insofar as these tenderers provide their goods, work or services for the most part for the contracting authority.
- ⁴ Furthermore, this Act does not apply to public contracts:
- a. if this is deemed necessary for the protection and maintenance of external or internal security or public order;
 - b. insofar as this is necessary for the protection of human health or life, or of flora and fauna;
 - c. insofar as tendering would infringe intellectual property rights.

Chapter 3: General Principles

Art. 11 Procedural principles

When awarding public contracts, the contracting authority shall observe the following procedural principles:

- a. It shall carry out award procedures transparently, objectively and impartially.
- b. It shall take measures against conflicts of interest, unlawful agreements affecting competition and against corruption.
- c. It shall ensure equal treatment of tenderers at all stages of the procedure.
- d. It shall dispense with bidding rounds.
- e. It shall safeguard the confidential nature of the information provided by tenderers.

Art. 12 Compliance with workplace health and safety regulations, terms and conditions of employment, equal pay for men and women, and environmental law

¹ For goods, work and services to be provided in Switzerland, the contracting authority shall award a public contract only to tenderers that comply with the

workplace health and safety regulations and the terms and conditions of employment applicable at the place of performance, the notification and authorisation duties in accordance with the Federal Act of 17 June 2005 on Measures to Combat Illegal Employment¹¹ (IEA) and the provisions on the equal treatment of men and women in terms of equal pay.

² For goods, work and services to be provided abroad, the contracting authority shall award a public contract only to tenderers that comply as a minimum with the Core Conventions of the International Labour Organization (ILO) in accordance with Annex 6. In addition, the contracting authority may require compliance with other important international labour standards, as well as appropriate evidence, and may arrange for checks to be carried out.

³ The contracting authority shall award a public contract only to tenderers that comply as a minimum with the legal provisions on the protection of the environment and the conservation of natural resources applicable at the place of performance; in Switzerland, these include the provisions of Swiss environmental law, and abroad the international conventions for the protection of the environment designated by the Federal Council.

⁴ Subcontractors are obliged to comply with the requirements set out in paragraphs 1 to 3. These obligations must be included in the agreements between tenderers and subcontractors.

⁵ The contracting authority may check compliance with the requirements set out in paragraphs 1 to 3 or outsource the task, provided this task was not delegated to an authority governed by special legislation or another suitable body, in particular a supervisory body with equal representation. The contracting authority may provide the authority or supervisory body with the necessary information and documents for carrying out these checks. The tenderer has to provide the evidence required upon request.

⁶ The authorities and supervisory bodies responsible for ensuring compliance with the requirements set out in paragraphs 1 to 3 report to the contracting authority on the results of the checks and on any measures taken.

Art. 13 Recusal

¹ Persons may not participate in the award procedure on the contracting authority's behalf or in a panel of experts if they:

- a. have a personal interest in a contract;
- b. are connected to a tenderer or a member of one of its governing bodies by marriage or registered partnership, or cohabit de facto with this party;

¹¹ SR 822.41

- c. are related to a tenderer or a member of one of its governing bodies by blood or by marriage in a direct line or collaterally to the third degree;
- d. are representatives of a tenderer or worked for a tenderer on the same matter; or
- e. lack the independence necessary to carry out public procurements for other reasons.

² A recusal request must be submitted immediately after the reason for recusal becomes known.

³ Decisions on recusal requests are made by the contracting authority or the panel of experts, excluding the person concerned.

Art. 14 Prior involvement

¹ Tenderers that were involved in the preparation of an award procedure are not permitted to submit a tender if the competitive advantage that they gain cannot be offset by appropriate means and if the exclusion does not jeopardise effective competition between tenderers.

² Appropriate means of offsetting the competitive advantage include in particular:

- a. the disclosure of all material information about the preparatory work;
- b. the disclosure of the parties involved in the preparatory work;
- c. the extension of minimum deadlines.

³ Any market clarification by the contracting authority prior to the public invitation to tender does not lead to prior involvement of the tenderers in question. The contracting authority discloses the results of the market clarification in the tender documentation.

Art. 15 Determining the value of the contract

¹ The contracting authority shall estimate the probable value of the contract.

² A public contract may not be split up in order to circumvent provisions of this Act.

³ When estimating the value of the contract, all of the goods, work and services to be put out to tender, as well as remuneration that is closely related materially or legally, 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.

⁴ In the case of fixed-term contracts, the contract value is calculated on the basis of the total remuneration over the entire term, including any extension options. As a rule, the fixed term may not exceed 5 years. A longer term may be envisaged in justified cases.

⁵ For open-ended contracts, the contract value is calculated by multiplying the monthly remuneration by 48.

⁶ In the case of contracts for goods, work or services required on a recurring basis, the contract 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 contract, on the basis of the estimated requirements over the next 12 months.

Chapter 4: Award Procedure

Art. 16 Thresholds

¹ The choice of procedure depends on the value of the contract and the thresholds in accordance with Annex 4. The Federal Council periodically adjusts the thresholds in line with international obligations after consulting the Inter cantonal Public Procurement Body.

² The Confederation guarantees the participation of the cantons in any adjustment of international obligations with regard to the thresholds.

³ If several contracting authorities subject to this Act, each with different thresholds, participate in a procurement, the thresholds of the contracting authority that provides the most financing apply to the entire procurement.

⁴ If the total value of several construction work items listed in section 1 of Annex 1 for the realisation of a structure reaches the threshold for the scope of international treaties, the provisions of this Act that govern procurements within the scope of international treaties apply. However, if the value of each individual construction work item is less than CHF 2 million and the total value of these items does not exceed 20% of the structure's total value, they are subject to the provisions for procurements outside the scope of international treaties (*de minimis* clause).

⁵ The applicable procedure for construction work outside the scope of international treaties is determined on the basis of the value of the individual construction work items.

Art. 17 Procedure types

Depending on the value of the contract and the thresholds, the contracting authority may choose to award public contracts by open procedure, selective procedure, invitation procedure or direct award procedure.

Art. 18 Open procedure

¹ In the open procedure, the contracting authority issues a public invitation tender.

² All tenderers may submit a tender.

Art. 19 Selective procedure

¹ In the selective procedure, the contracting authority issues a public invitation to tender and invites the tenderers to submit a request to participate first.

² The contracting authority selects the tenderers that may submit a tender based on their eligibility.

³ The contracting authority may limit the number of tenderers permitted to tender, provided that effective competition is maintained. If possible, at least three tenderers are permitted to submit tenders.

Art. 20 Invitation procedure

¹ The invitation procedure applies to public contracts outside the scope of international treaties in accordance with the thresholds in Annex 4.

² In the invitation procedure, the contracting authority invites the tenderers of its choice to submit tenders without launching a public invitation to tender. It prepares tender documentation for this purpose. If possible, at least three tenders are obtained.

³ An invitation procedure without observing the thresholds may be used for the procurement of weapons, ammunition, war material and, provided they are essential for defence and security purposes, other supplies of goods, construction work, services and research or development services.

Art. 21 Direct award procedure

¹ In the direct award procedure, the contracting authority awards a public contract directly without an invitation to tender. The contracting authority is entitled to obtain comparative quotes and to conduct negotiations.

² The contracting authority may award a contract using the direct award procedure irrespective of the threshold value if one of the following conditions is met:

- a. In the open, selective or invitation procedure, no tenders or requests to participate are received, no tender meets the essential requirements of the tender or the technical specifications, or no tenderer meets the eligibility criteria.
- b. There are sufficient indications that all of the tenders received in the open, selective or invitation procedure are based on unlawful agreements affecting competition.
- c. Due to the technical or artistic features of the contract or for reasons of intellectual property protection, only one tenderer is eligible and there is no appropriate alternative.

- d. Due to unforeseeable events, procurement becomes so urgent that, even with shortened deadlines, an open, selective or invitation procedure cannot be carried out.
- e. 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.
- f. The contracting authority is procuring original products (prototypes) or new types of supplies which are produced or developed at its request as part of a research, trial, study or new development contract.
- g. The contracting authority is procuring supplies on commodity exchanges.
- h. The contracting authority can procure supplies at a price significantly lower than the customary prices due to a favourable, temporary offer (particularly in the case of liquidation sales).
- i. The contracting authority is awarding the follow-up contract to the winner of a planning or turnkey contract competition or of a selection procedure for planning or turnkey contract studies; the following conditions must be met:
 - 1. the preceding procedure was conducted in compliance with the principles of the law;
 - 2. the proposed solutions were assessed by an independent panel of experts;
 - 3. the contracting authority reserved the right in the invitation to tender to award the subsequent contract in a direct award procedure.

³ The contracting authority may use the direct award procedure to award a contract as described in Article 20 paragraph 3 if the direct award procedure is of major significance:

- a. for maintaining domestic companies which are important for national defence; or
- b. for safeguarding Switzerland's public interests.

⁴ The contracting authority shall prepare documentation with the following content on each contract awarded in accordance with paragraphs 2 or 3:

- a. the name of the contracting authority and the tenderer selected;
- b. the type and value of the supplies procured;
- c. an explanation of the circumstances and conditions justifying the use of the direct award procedure.

⁵ Public contracts may not be defined with the intention that only one specific tenderer is considered for the award from the outset, particularly due to the technical

or artistic features of the contract (paragraph 2 letter c) or in the case of replacing, supplementing or extending supplies already provided (paragraph 2 letter e).

Art. 22 Design contest and study contracts

¹ The contracting authority that organises a design contest or a competition to conduct studies including execution or awards study contracts shall regulate the procedure on a case-by-case basis in compliance with the principles of this Act. It may refer to the relevant provisions of trade associations.

² The Federal Council shall determine:

- a. the types of design contest and the terms of study contracts;
- b. the types of procedure to be applied;
- c. the requirements in terms of preparatory work;
- d. the arrangements for the preliminary technical examination of the competition entries prior to their evaluation by the panel of experts;
- e. the specific terms for study contracts and design contest for the procurement of information and communication technology supplies;
- f. the make-up of the panel of experts and the requirements concerning the independence of its members;
- g. the tasks of the panel of experts;
- h. the conditions under which the panel of experts may decide on purchases;
- i. the conditions under which the panel of experts may rank competition entries that deviate from the provisions of the design contest programme;
- j. the manner in which prizes may be awarded and the claims that the winners may make depending on the type of design contest;
- k. the compensation for the creators of award-winning competition entries in cases where the contracting authority does not follow the recommendation of the panel of experts.

Art. 23 Electronic auctions

¹ The contracting authority may hold an electronic auction for the procurement of standardised goods, work or services within the framework of a procedure under this Act. In this case, the tenders are revised after an initial full evaluation and re-ranked using electronic aids and, if necessary, multiple rounds. Reference must be made to this in the invitation to tender.

² The electronic auction covers the following areas:

- a. prices where the contract is to be awarded to the tenderer with the lowest total price; or

- b. prices and values for quantifiable components such as weight, purity or quality where the contract is to be awarded to the most advantageous tender.

³ The contracting authority checks whether the tenderers meet the eligibility criteria and whether the tenders fulfil the technical specifications. It carries out an initial evaluation of the tenders based on the award criteria and the weighting established for this purpose. Before the auction begins, it provides each tenderer with the following:

- a. the automatic evaluation method, including the mathematical formula based on the award criteria specified;
- b. the result of the initial evaluation of its tender; and
- c. all other relevant information regarding the auction process.

⁴ All eligible tenderers are simultaneously invited electronically to submit new or amended tenders. The contracting authority may limit the number of eligible tenderers, provided it announced this in the invitation to tender or in the tender documentation.

⁵ The electronic auction may comprise several successive rounds. The contracting authority informs all tenderers of their rank in each round.

Art. 24 Dialogue

¹ In the case of complex contracts, intellectual services or the procurement of innovative goods, work or services, a contracting authority may, within the framework of an open or selective procedure, conduct a dialogue with the aim of specifying the subject of the supply and identifying and defining the solutions or procedures. Reference must be made to the dialogue in the invitation to tender.

² The dialogue may not be conducted for the purpose of negotiating prices or total prices.

³ The contracting authority formulates and explains its needs and requirements in the invitation to tender or in the tender documentation. It also discloses the following:

- a. the dialogue process;
- b. the possible content of the dialogue;
- c. whether and how tenderers will be compensated for their participation in the dialogue and the use of their intellectual property rights, knowledge and experience;
- d. the timeframes and arrangements for submitting the final tender.

⁴ It may reduce the number of participating tenderers by using objective and transparent criteria.

⁵ It documents the process and content of the dialogue in an appropriate and comprehensible manner.

⁶ The Federal Council may regulate the dialogue arrangements in more detail.

Art. 25 Framework agreements

¹ The contracting authority may issue an invitation to tender towards agreements with one or more tenderers with the aim of determining the terms for the goods, work and services to be procured over a given period, in particular with regard to their price and, where appropriate, the quantities envisaged. The contracting authority may conclude individual contracts based on such a framework agreement during its term.

² Framework agreements may not be used with the intention or effect of impeding or eliminating competition.

³ The term of a framework agreement may not exceed 5 years. An automatic extension is not possible. A longer term may be envisaged in justified cases.

⁴ If a framework agreement is concluded with only one tenderer, the individual contracts based on this framework agreement are concluded in accordance with the terms of the framework agreement. For the conclusion of the individual contracts, the contracting authority may ask the respective contracting party in writing to complete its tender.

⁵ If framework agreements are concluded with several tenderers for sufficient reasons, the contracting authority may choose to conclude individual contracts either in accordance with the terms of the respective framework agreement without a new call for tenders or in accordance with the following procedure:

- a. Before concluding each individual contract, the contracting authority consults the contracting parties in writing and informs them of the specific needs.
- b. The contracting authority sets the contracting parties a reasonable deadline for submitting tenders for each individual contract.
- c. The tenders must be submitted in writing and are binding for the period specified in the request.
- d. The contracting authority concludes the individual contract with the contracting party that submits the best tender based on the criteria defined in the tender documentation or framework agreement.

Chapter 5: Award Requirements

Art. 26 Participation conditions

¹ During the award procedure and the execution of the contract to supply the goods, work or services, the contracting authority shall ensure that the tenderer and its subcontractors fulfil the participation conditions, particularly the requirements set out in Article 12, have paid the taxes and social security contributions due and refrain from entering into any unlawful agreements affecting competition.

² It may require the tenderer to provide evidence of compliance with the participation conditions, specifically by means of a self-declaration or inclusion on a list.

³ It states what evidence must be submitted and when in the invitation to tender or in the tender documentation.

Art. 27 Eligibility criteria

¹ The contracting authority shall set out the tenderer eligibility criteria in full in the invitation to tender or in the tender documentation. The criteria must be objectively necessary and verifiable for the procurement project.

² The eligibility criteria may relate in particular to the tenderer's professional, financial, economic, technical and organisational capacity, as well as to its experience.

³ The contracting authority shall specify what evidence must be submitted and when in the invitation to tender or in the tender documentation.

⁴ It may not impose the condition that the tenderer has already received one or more public contracts from a contracting authority subject to this Act.

Art. 28 Lists

¹ The contracting authority may keep a list of tenderers that meet the requirements for receiving public contracts by virtue of their eligibility.

² The following information must be published on the internet platform of the Confederation and the cantons:

- a. the source of the list;
- b. information on the criteria to be met;
- c. verification methods and conditions for inclusion on the list;
- d. period of validity and procedure for renewing inclusion on the list.

³ A transparent procedure must ensure that it is possible at any time to request inclusion, to examine or verify eligibility, and to place a tenderer on the list or delete it from it.

⁴ Tenderers that are not included on a list are also permitted to participate in a specific procurement project if they provide proof of their eligibility.

⁵ If the list is deleted, the tenderers listed shall be informed.

Art. 29 Award criteria

¹ The contracting authority evaluates the tenders using performance-related award criteria. In compliance with Switzerland's international obligations, it shall in particular take into account, besides the price and quality, criteria such as appropriateness, timeframes, technical value, economic efficiency, life cycle costs, aesthetics, sustainable development, plausibility of the tender, the different price levels in the countries where the supply is provided, reliability of the price, creativity, customer service, delivery conditions, infrastructure, innovation content, functionality, service readiness, expertise or efficiency of the methodology.

² Outside the scope of international treaties, the contracting authority may additionally take into account the extent to which the tenderer provides apprenticeships places, jobs for older employees or jobs to reintegrate long-term unemployed people.

³ The contracting authority shall indicate the award criteria and their weighting in the invitation to tender or in the tender documentation. The weighting may be omitted if the procurement concerns solutions, possible solutions or procedures.

⁴ For standardised services, the award may be made exclusively based on the lowest total price criterion, provided that the technical specifications for the goods, work or services guarantee high sustainability standards in social, environmental and economic terms.

Art. 30 Technical specifications

¹ The contracting authority shall set out the required technical specifications in the invitation to tender or in the tender documentation. These describe the characteristics of what is to be procured, such as function, performance, quality, safety, security, dimensions and production processes, and regulate the labelling and packaging requirements.

² When setting out the technical specifications, the contracting authority shall rely as far as possible and appropriate on international standards, or failing that on technical regulations used in Switzerland, recognised national standards or industry recommendations.

³ Certain companies or trademarks, patents, copyrights, designs or types, and references to a specific origin or to specific producers are not permitted as technical specifications, unless there is no other sufficiently precise or comprehensible way of

describing the goods, work or services and the contracting authority includes the words "or equivalent" in the tender documentation. Equivalence has to be proven by the tenderer.

⁴ The contracting authority may stipulate technical specifications for the conservation of natural resources or the protection of the environment.

Art. 31 Bidding consortia and subcontractors

¹ Bidding consortia and subcontractors are permitted, provided the contracting authority does not exclude or restrict this possibility in the invitation to tender or in the tender documentation.

² Multiple tenders by subcontractors or multiple tenderers in the context of consortia are possible only if they are expressly permitted in the invitation to tender or in the tender documentation.

³ The characteristic supply generally has to be provided by the tenderer.

Art. 32 Lots and partial supplies

¹ The tenderer has to submit a complete tender for what is to be procured.

² The contracting authority may divide the procurement item into lots and award them to one or more tenderers.

³ If the contracting authority has formed lots, tenderers may submit a tender for several lots, unless the contracting authority has provided otherwise in the invitation to tender. It may stipulate that a single tenderer may receive only a limited number of lots.

⁴ If the contracting authority reserves the right to require tenderers to cooperate with third parties, it announces this in the invitation to tender.

⁵ The contracting authority may reserve the right to award contracts for partial supplies in the invitation to tender.

Art. 33 Variants

¹ Tenderers are free to propose variants in addition to the goods, work or services described in the invitation to tender. The contracting authority may limit or exclude this possibility in the invitation to tender.

² 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 contracting authority.

Art. 34 Formal requirements

¹ Tenders and requests to participate must be submitted in writing, in full and by the deadline as specified in the invitation to tender or in the tender documentation.

² They may be submitted electronically if this is provided for in the invitation to tender or tender documentation and the requirements defined by the contracting authority are complied with.

Chapter 6: Award Procedure

Art. 35 Content of the invitation to tender

The publication of an invitation to tender contains at least the following information:

- a. name and address of the contracting authority;
- b. type of contract and procedure and the relevant CPV¹² classification, as well as the relevant CPC¹³ classification in the case of services;
- c. description of the goods, work or services, including the type and quantity, or, if the quantity is unknown, an estimate thereof, and any options;
- d. place and time of performance;
- e. if applicable, a division into lots, restriction on the number of lots and admission of partial tenders;
- f. if applicable, a restriction on or exclusion of bidding consortia and subcontractors;
- g. if applicable, a restriction on or exclusion of variants;
- h. in the case of contracts for goods, work or services required on a recurring basis, an indication of the date of the subsequent invitation to tender if possible and, if appropriate, an indication that the timeframe for submitting tenders will be shortened;
- i. where appropriate, an indication that an electronic auction will be held;
- j. where appropriate, an indication of the intention to conduct a dialogue;
- k. the deadline for submitting tenders or requests to participate;
- l. formal requirements for the submission of tenders or requests to participate, in particular, an indication that the supply and price tenders may need to be in two separate envelopes;
- m. language(s) of the procedure and tender;
- n. the eligibility criteria and the evidence required;

¹² CPV = Common procurement vocabulary of the European Union

¹³ CPC = Central product classification of the United Nations

- o. in the case of a selective procedure, the maximum number of tenderers invited to submit tenders, if applicable;
- p. the award criteria and their weighting, if this information is not provided in the tender documentation;
- q. where appropriate, the reservation of the right to award contracts for partial supplies;
- r. the period of validity of tenders;
- s. an indication of where the tender documentation can be obtained and, if applicable, a fee to cover costs;
- t. an indication as to whether the procurement falls within the scope of international treaties;
- u. where appropriate, already involved tenderers permitted to take part in the procedure;
- v. where appropriate, instructions on legal remedies.

Art. 36 Contents of the tender documentation

Where this information is not already contained in the invitation to tender, the tender documentation provides the following information:

- a. name and address of the contracting authority;
- b. the subject of the procurement, including technical specifications and certificates of conformity, plans, drawings and necessary instructions, as well as information on the quantity needed;
- c. formal requirements and participation conditions for the tenderers, including a list of data and documents that the tenderers must submit in connection with the participation conditions, as well as any weighting of the eligibility criteria;
- d. the award criteria and their weighting;
- e. if the contracting authority processes the procurement electronically: any authentication and encryption requirements for the electronic submission of information;
- f. if the contracting authority envisages an electronic auction: the rules for conducting the auction, including the indication of those tender components which may be adapted and which will be evaluated based on the award criteria;
- g. the date, time and place for tender opening if the tenders are opened publicly;

- h. all other terms and conditions necessary for the preparation of tenders, particularly the specification of the currency in which the tender is to be submitted (usually Swiss francs);
- i. timeframes for the provision of the goods, work or services.

Art. 37 Opening of tenders

¹ In the open and selective procedure, all tenders submitted on time are opened by at least two representatives of the contracting authority.

² Minutes of the tender opening are prepared. These must contain at least the names of the people present, the names of the tenderers, the date of their tender submission, any tender variants and the total price of each tender.

³ If the supply and price tenders must be submitted in two separate envelopes, the envelopes must be opened in accordance with paragraphs 1 and 2, but only the total prices must be recorded in the minutes regarding the opening of the second envelope.

⁴ At the latest after the contract has been awarded, all tenderers are granted access to the minutes upon request.

Art. 38 Verification of tenders

¹ The contracting authority verifies the tenders received for compliance with the formal requirements. It corrects any obvious calculation errors.

² The contracting authority may require tenderers to explain their tenders. It keeps a written record of the request and the answers.

³ If a tender is received with a total price that appears unusually low in comparison with the other tenders, the contracting authority must obtain appropriate information from the tenderer as to whether the participation conditions have been complied with and whether the other requirements of the invitation to tender have been understood.

⁴ If supply and price tenders must be submitted in two separate envelopes, the awarding office first prepares a ranking according to the quality of the tenders. In a second step, it evaluates the total prices.

Art. 39 Adjustment of tenders

¹ 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.

² An adjustment takes place only if:

- a. this is the only way to clarify the contract or the tenders or to make the tenders objectively comparable in accordance with the award criteria; or
- b. supply changes are objectively and materially necessary, whereby what is to be supplied, the criteria and the specifications may not be adapted in such a way that the characteristic supply or the potential group of tenderers changes as a result.

³ A call for price adjustments is permitted only in connection with the circumstances described in paragraph 2.

⁴ The contracting authority logs the results of the adjustment.

Art. 40 Evaluation of tenders

¹ Provided that the eligibility criteria and technical specifications are met, the tenders are examined and evaluated objectively, uniformly and comprehensibly in accordance with the award criteria. The contracting authority documents the evaluation.

² If the comprehensive examination and evaluation of tenders requires considerable time and effort, and provided that the contracting authority announced this in the invitation to tender, it may subject all tenders to an initial examination and rank them based on the documents submitted. Where possible, it selects the three best-ranked tenders on that basis and subjects them to a comprehensive examination and evaluation.

Art. 41 Award

The contract is awarded to the most advantageous tender.

Art. 42 Conclusion of the contract

¹ In the case of contracts outside the scope of international treaties, a contract may be concluded with the selected tenderer after the award has been made.

² In the case of contracts within the scope of international treaties, a contract may be concluded with the selected tenderer after expiry of the deadline for appealing against the award, unless the Federal Administrative Court has granted suspensive effect to an appeal against the award.

³ If, in the case of contracts within the scope of international treaties, an appeal procedure against the award is pending without suspensive effect having been requested or granted, the contracting authority shall notify the court immediately of the conclusion of the contract.

Art. 43 Abandonment

¹ The contracting authority may abandon the award procedure, particularly if:

- a. it decides not to award the public contract for valid reasons;
- b. no tender meets the technical specifications or the other requirements;
- c. more advantageous tenders are to be expected due to changes in the framework conditions;
- d. the tenders submitted do not allow for economical procurement, or significantly exceed the cost framework;
- e. there are sufficient indications of an unlawful agreement affecting competition between the tenderers;
- f. a significant change in the goods, work or services requested becomes necessary.

² Tenderers are not entitled to compensation in the event of a justified abandonment of the procedure.

Art. 44 Exclusion from the procedure and revocation of the award

¹ The contracting authority may exclude a tenderer from an award procedure, delete it from a list or revoke a contract it has already been awarded if it is found that the tenderer concerned, one of its governing bodies, a third party called upon or one of such a party's governing bodies:

- a. does not fulfil or no longer fulfils the conditions for participation in the procedure, or its behaviour jeopardises the legally compliant conduct of the award procedure;
- b. submitted a tender or request to participate that contains substantial formal errors or deviates substantially from the binding requirements of an invitation to tender;
- c. has been found guilty by a legally enforceable judgment of a misdemeanour to the detriment of the contracting authority or of a felony.
- d. is subject to attachment or bankruptcy proceedings;
- e. has violated anti-corruption provisions;
- f. refuses to allow inspections that have been ordered;
- g. has failed to pay taxes or social security contributions that are due;
- h. has failed to execute previous public contracts correctly or otherwise demonstrated that it is not a reliable and trustworthy partner;

- i. was involved in the preparation of the procurement and the resulting competitive disadvantage for the other tenderers cannot be offset by appropriate means; or
- j. has been legally excluded from future public contracts under Article 45 paragraph 1.

² The contracting authority may also take measures in accordance with paragraph 1 if there are sufficient indications that the tenderer, one of its governing bodies, a third party called upon or one of such a party's governing bodies:

- a. gave the contracting authority untrue or misleading statements and information;
- b. entered into unlawful agreements affecting competition;
- c. submitted an abnormally low tender without proving compliance with the participation conditions upon request and offers no guarantee that the goods, work or services put out to tender will be provided in accordance with the contract;
- d. infringed recognised professional rules or compromised their professional honour or integrity through its acts or omissions;
- e. is insolvent;
- f. disregard workplace health and safety regulations, terms and conditions of employment, the provisions on the equal treatment of men and women in terms of equal pay, the provisions on confidentiality and the provisions of Swiss environmental law or the international conventions for the protection of the environment designated by the Federal Council;
- g. violated reporting or authorisation obligations under the IEA¹⁴; or
- h. violated the Federal Act of 19 December 1986 on Unfair Competition¹⁵.

Art. 45 Sanctions

¹ If a tenderer or subcontractor which, either itself or through its governing bodies, fulfils to a serious extent one or more of the criteria referred to in Article 44 paragraph 1 letters c and e and paragraph 2 letters b, f and g, the contracting authority or the competent authority by virtue of the law order may exclude it from future public contracts for a period of up to 5 years. A warning may be issued in minor cases. In the case of corruption (Art. 44 para. 1 lit. e), the tenderer is excluded from contracts awarded by all federal contracting authorities; in the other cases, the

¹⁴ SR 822.41

¹⁵ SR 241

tenderer is excluded from contracts awarded by the contracting authority concerned only.

² The possible sanctions apply irrespective of whether any further legal action is taken against the tenderer or subcontractor concerned or its governing bodies. The contracting authority shall notify the Competition Commission of any suspicion of unlawful agreements affecting competition (Art. 44 para. 2 lit. b).

³ The contracting authority or the competent authority by virtue of the law shall notify an office designated by the Federal Council of a legally binding exclusion in accordance with paragraph 1. This office shall keep a non-public list of sanctioned tenderers and subcontractors, which records the reasons for the exclusion and the duration of the exclusion from public contracts. The office shall ensure that each contracting authority can obtain the relevant information in relation to a particular tenderer or subcontractor. It may establish a retrieval procedure for this purpose. The Confederation and the cantons shall allow mutual access to all information collected in accordance with this article. The entry is deleted from the list once the sanction has expired.

Chapter 7: Deadlines and Publications, Statistics

Art. 46 Deadlines

¹ When setting the deadlines for submitting tenders or requests to participate, the contracting authority shall take account of the complexity of the contract, the probable number of subcontracts and the mode of transmission.

² The following minimum deadlines apply within the scope of international treaties:

- a. in an open procedure: 40 days from publication of the invitation to tender for the submission of tenders;
- b. in a selective procedure: 25 days from publication of the invitation to tender for the submission of requests to participate and 40 days from the invitation to prepare tenders for the submission of tenders.

³ Any extension of these deadlines must be published or notified to all tenderers in good time.

⁴ Outside the scope of international treaties, the deadline for submitting tenders is generally at least 20 days. In the case of largely standardised goods, work and services, the deadline may be reduced to no shorter than 5 days.

Art. 47 Shortening of the deadlines within the scope of international treaties

¹ The contracting authority may reduce the minimum deadlines set out in Article 46 paragraph 2 to no shorter than 10 days in cases of proven urgency.

² It may reduce the minimum 40-day deadline for submitting tenders under Article 46 paragraph 2 by 5 days if:

- a. the invitation to tender is published electronically;
- b. the tender documentation is simultaneously published electronically;
- c. tenders are received electronically.

³ It may reduce the minimum 40-day period for submitting tenders under Article 46 paragraph 2 to no shorter than 10 days, provided it has published a prior notice with the following content at least 40 days and no more than 12 months before publication of the invitation to tender:

- a. subject of the intended procurement;
- b. approximate timeframe for submitting tenders or requests to participate;
- c. the fact that interested tenderers should inform the contracting authority of their interest in the procurement;
- d. where the tender documentation can be obtained;
- e. all other information under Article 35 that is already available at that time.

⁴ It may reduce the minimum 40-day period for submitting tenders under Article 46 paragraph 2 to no shorter than 10 days if it is procuring goods, work or services required on a recurring basis and given notice of the shortening of the period in an earlier invitation to tender.

⁵ Furthermore, the contracting authority may in any event reduce the deadline for submitting tenders to no shorter than 13 days when purchasing commercial goods, work or services or a combination of the two, provided it electronically publishes the tender documentation together with the invitation to tender. If the contracting authority accepts tenders for commercial goods, work or services electronically, it may also reduce the deadline to no shorter than 10 days.

Art. 48 Publications

¹ In the open and selective procedure, the contracting authority publishes the prior notice, the invitation to tender, the award and the abandonment of the procedure on an internet platform for public procurement operated jointly by the Confederation and the cantons. It also publishes awards that were made using the direct award procedure for contracts above the applicable threshold for the open or selective procedure. This does not apply to contracts awarded using the direct award procedure in accordance with Annex 5 section 1 letters c and d.

² The tender documentation is generally made available at the same time and electronically. Access to these publications is free of charge.

³ The organisation commissioned by the Confederation and the cantons to develop and operate the internet platform may impose fees or charges for the contracting authorities, tenderers and other parties that use the platform or associated services. These are based on the number of publications or the scope of the services used.

⁴ In the case of contracts within the scope of international treaties that are not published in an official language of the World Trade Organization (WTO), the contracting authority shall publish a summary of the notice in an official language of the WTO at the same time as the invitation to tender. The summary must contain at least the following:

- a. subject of the procurement;
- b. timeframe for submitting tenders or requests to participate;
- c. where the tender documentation can be obtained.

⁵ The Federal Council shall regulate any additional requirements concerning the languages of publications, the tender documentation, submissions by tenderers and the procedure. It may take appropriate account of Switzerland's plurilingualism. It may modify the requirements according to supply types. The following principles apply, subject to exceptions expressly specified by the Federal Council:

- a. In the case of construction contracts and associated supplies of goods and services, invitations to tender and awards must be published in at least two official languages, particularly in the official language at the construction location.
- b. In the case of supply and service contracts, invitations to tender and awards must be published in at least two official languages.
- c. Any official language may be used for submissions by tenderers.

⁶ Contracts awarded within the scope of international treaties generally have to be published within 30 days. The notification must contain the following information:

- a. type of procedure used;
- b. subject and scope of the contract;
- c. name and address of the contracting authority;
- d. date of the award;
- e. name and address of the tenderer selected;
- f. total price of the tender selected or, in exceptional cases, the lowest and highest total prices of the tenders included in the award procedure, including VAT.

Art. 49 Retention of documents

¹ The contracting authorities shall retain the relevant documents concerning an award procedure for at least 3 years from the date of the legally binding award.

² The documents to be retained include:

- a. the invitation to tender;
- b. the tender documentation;
- c. the minutes of the tender opening;
- d. the correspondence concerning the award procedure;
- e. the adjustment logs;
- f. decisions within the framework of the award procedure;
- g. the tender selected;
- h. data to allow the traceability of the electronic processing of a procurement;
- i. documentation on public contracts within the scope of international treaties awarded using the direct award procedure.

Art. 50 Statistics

¹ Within twelve months of the end of each calendar year, the contracting authorities shall compile electronic statistics on the previous year's procurement within the scope of international treaties for the State Secretariat for Economic Affairs (SECO).

² The statistics shall contain at least the following information:

- a. the number and total value of the public contracts awarded by each contracting authority, broken down into construction work, supply and service contracts, indicating the relevant CPC or CPV classification;
- b. the number and total value of the public contracts awarded using the direct award procedure;
- c. where no data can be provided: estimates of the data referred to under a and b, together with an explanation of the estimation method used.

³ The total value indicated shall include value added tax.

⁴ SECO's overall statistics are publicly accessible, subject to data protection and the protection of commercial secrecy.

Chapter 8: Rights of Appeal

Art. 51 Notification of decisions

¹ The contracting authority shall notify the tenderers of its decisions by publication or individual notification. The tenderers have no right to be heard before the decision is notified.

² Appealable decisions must be summarily substantiated and include instructions on rights of appeal.

³ The summary substantiation for an award shall include:

- a. the type of procedure and the name of the successful tenderer;
- b. the total price of the successful tender or, by way of exception, the lowest and highest total prices of the tenders submitted in the award procedure;
- c. the decisive features and advantages of the successful tender;
- d. where applicable, the rationale for using the direct award procedure.

⁴ The contracting authority may not disclose any information if disclosure would:

- a. violate applicable law or harm public interests;
- b. prejudice legitimate economic interests of the tenderers; or
- c. jeopardise fair competition between the tenderers.

Art. 52 Appeal

¹ The contracting authorities' decisions may be appealed to the Federal Administrative Court:

- a. in the case of supplies of goods or services: when the contract value exceeds the applicable threshold for the invitation procedure;
- b. in the case of construction work: when the contract value exceeds the applicable threshold for the open or selective procedure.

² In the case of contracts outside the scope of international treaties, the appeal may only seek a declaration that a decision violates federal law; this does not apply to appeals against decisions in accordance with Article 53 paragraph 1 letter i. Foreign tenderers may appeal if the state in which they are domiciled grants reciprocal rights.

³ The Federal Supreme Court has direct jurisdiction for appeals against procurements of the Federal Administrative Court.

⁴ The Federal Supreme Court shall appoint an internal appeals committee to assess appeals against Federal Supreme Court procurements.

⁵ There is no right of appeal against the award of the public contracts referred to in Annex 5 section 1 letters c and d.

Art. 53 Object of appeal

¹ Solely the following may be contested by appeal:

- a. the invitation to tender for the contract;
- b. the decision on the choice of tenderers in the selective procedure;

- c. the decision to include a tenderer on a list or to remove a tenderer from a list;
- d. the decision on recusal requests;
- e. the award;
- f. the revocation of the award;
- g. the abandonment of the procedure;
- h. exclusion from the procedure;
- i. the imposition of a sanction.

² Orders in the tender documentation whose significance is apparent may be challenged only within the framework of an appeal against the invitation to tender.

³ The provisions of this Act on the right to be heard in the decision-making procedure, on suspensive effect and on limiting the grounds for appeal do not apply to appeals against the imposition of a sanction.

⁴ Decisions under paragraph 1 letters c and i may be appealed irrespective of the value of the contract.

⁵ There are no further rights of appeal against decisions under this Act.

⁶ There is no right of appeal against the conclusion of individual contracts in accordance with Article 25 paragraphs 4 and 5.

Art. 54 Suspensive effect

¹ The appeal does not have suspensive effect.

² The Federal Administrative Court may, upon request, grant suspensive effect to an appeal against a contract within the scope of international treaties if the appeal appears to be sufficiently justified and there are no overriding public interests to the contrary. As a rule, only an exchange of correspondence takes place on the issue of suspensive effect.

³ A suspensive effect request that is an abuse of law or not made in good faith is not protected. Claims for damages by the contracting authority and the tenderer selected must be assessed by the civil courts.

Art. 55 Applicable law

Unless otherwise provided for in this Act, the decision-making and appeals procedure is governed by the provisions of the Federal Act of 20 December 1968 on Administrative Procedure¹⁶ (APA).

¹⁶ SR 172.021

Art. 56 Appeal timeframe, grounds for appeal and entitlement to appeal

¹ Appeals must be submitted in writing with a statement of the grounds within 20 days of the decision being notified.

² The provisions of the APA¹⁷ and the Federal Act of 17 June 2005 on the Federal Supreme Court¹⁸ on legal holidays do not apply to the award procedures under this Act.

³ The appropriateness of a decision cannot be reviewed in appeal proceedings.

⁴ Only those that can prove that they can and wish to provide the goods, work or services requested or equivalent goods, work or services may appeal against awards in the direct award procedure. An appeal may be filed only on the grounds that the direct award procedure was wrongly applied or that the contract was awarded based on corruption.

Art. 57 Inspection of files

¹ There is no right to inspect files in the decision-making procedure.

² In the appeal procedure, the complainant must be granted access, upon request, to the evaluation of its tender and other procedural files relevant to the decision, unless there are overriding public or private interests to the contrary.

Art. 58 Appeal decision

¹ The appeal body may decide on the case itself or refer it back to the previous instance or to the contracting authority. In the event of referral, it must issue binding instructions.

² If the appeal proves to be justified and the contract has already been concluded with the tenderer selected, the appeal body shall determine the extent to which the contested decision violates the applicable law.

³ At the same time as establishing the violation, the appeal body shall decide on any claim for damages.

⁴ Damages are limited to the necessary expenses incurred by the tenderer in connection with preparing and submitting its tender.

¹⁷ SR 172.021

¹⁸ SR 173.110

Chapter 9: Public Procurement Commission for the Confederation and the Cantons

Art. 59

¹ The Public Procurement Commission for the Confederation and the Cantons (KBBK) is responsible for monitoring Switzerland's international obligations in the area of public procurement. It comprises equal numbers of representatives of the Confederation and the cantons. SECO is responsible for providing the secretariat.

² The Public Procurement Commission performs the following tasks in particular:

- a. preparing Switzerland's position in international bodies for the attention of the Federal Council and advising the Swiss negotiation delegations;
- b. promoting the exchange of information and experience between the Confederation and the cantons, and drawing up recommendations concerning the implementation of international obligations in Swiss law;
- c. fostering contacts with foreign supervisory authorities;
- d. providing advice and mediating in individual cases in the event of disputes relating to matters referred to under letters a to c.

³ If there are indications that Switzerland's international obligations concerning public procurement are being violated, the KBBK may intervene with the federal or cantonal authorities and cause them to clarify the circumstances and take the necessary measures if irregularities are found.

⁴ The KBBK may prepare expert reports or mandate experts to do so.

⁵ The KBBK drafts its own regulations, which require the approval of the Federal Council and the Intercantonal Public Procurement Body.

Chapter 10: Final Provisions

Art. 60 Implementation

¹ The Federal Council issues the implementing provisions. It may delegate the task of issuing implementing provisions on the statistics described in Article 50 to the federal office responsible for procurement.

² When issuing the implementing provisions, it shall comply with the requirements of the relevant international treaties.

³ The Confederation may participate in the organisation that operates the internet platform of the Confederation and the cantons for public procurement in Switzerland.

Art. 61 Repeal and amendment of other legislative instruments

The repeal and amendment of other legislative instruments are covered in Annex 7.

Art. 62 Transitional provision

Award procedures initiated before the entry into force of this Act will be completed under existing law.

Art. 63 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council will determine the commencement date.

National Council, 21 June 2019

President: Marina Carobbio Guscetti

Secretary: Pierre-Hervé Freléchoz

Council of States, 21 June 2019

President: Jean-René Fournier

Secretary: Martina Buol

Publication date: 2 July 2019¹⁹

Referendum deadline: 10 October 2019

¹⁹ BBl 2019 4505

Annex 1
(Art. 8 para. 4 and Art. 16 para. 4)

Construction work

1 Construction work within the scope of international treaties

	UN Central Product Classification (CPC prov) reference no.
1. Pre-erection work at construction sites	511
2. Construction work for buildings	512
3. Construction work for civil engineering	513
4. Assembly and erection of prefabricated construction	514
5. Special trade construction work	515
6. Installation work	516
7. Building completion and finishing work	517
8. Renting services related to equipment for construction	518

2 Construction work outside the scope of international treaties

Other construction work

Supplies of goods

1 Supplies of goods within the scope of international treaties

1.1 The following are deemed to be goods within the scope of international treaties:

- a. for procurements by the contracting authorities responsible for defence and security, designated as such in the international treaties applicable to Switzerland: the goods included in the following list of civil materials for defence, security and safety;
- b. for procurements by other contracting authorities: all goods.

1.2 List of civil materials for defence, security and safety

	Harmonized System (HS) nomenclature ²⁰
1 Salt; sulphur; earths, stone; plastering materials, lime and cement	Chapter 25
2. Ores, slag and ash	Chapter 26
3. Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	Chapter 27
4. Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes	Chapter 28
5. Organic chemicals	Chapter 29
6. Pharmaceutical products	Chapter 30
7. Fertilisers	Chapter 31
8. Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks	Chapter 32
9. Essential oils and resinoids; perfumery, cosmetic or toilet preparations	Chapter 33

²⁰ International Convention of 14 June 1983 on the Harmonized Commodity Description and Coding System (SR **0.632.11**)

	Harmonized System (HS) nomenclature
10. Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, "dental waxes" and dental preparations with a basis of plaster	Chapter 34
11. Albuminoidal substances; modified starches; glues; enzymes	Chapter 35
12. Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations	Chapter 36
13. Photographic or cinematographic goods	Chapter 37
14. Miscellaneous chemical products	Chapter 38
15. Plastics and articles thereof	Chapter 39
16. Rubber and articles thereof	Chapter 40
17. Raw hides and skins (other than furskins) and leather	Chapter 41
18. Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)	Chapter 42
19. Furskins and artificial fur; manufactures thereof	Chapter 43
20. Wood and articles of wood; wood charcoal	Chapter 44
21. Cork and articles of cork	Chapter 45
22. Basketware and wickerwork	Chapter 46
23. Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard	Chapter 47
24. Paper and paperboard; articles of paper pulp, of paper or of paperboard	Chapter 48
25. Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans	Chapter 49
26. Silk	Chapter 50
27. Wool, fine or coarse animal hair; horsehair yarn and woven fabric	Chapter 51
28. Cotton	Chapter 52
29. Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	Chapter 53

	Harmonized System (HS) nomenclature
30. Man-made filaments; except for: 54.07: Woven fabrics of synthetic filament yarn 54.08: Woven fabrics of artificial filament yarn	Chapter 54
31. Man-made staple fibres; except for: 55.11–55.16: Yarn of synthetic or man-made staple fibres	Chapter 55
32. Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof; except for: 56.08: Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials	Chapter 56
33. Carpets and other textile floor coverings	Chapter 57
34. Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	Chapter 58
35. Knitted or crocheted fabrics	Chapter 60
36. Articles of apparel and clothing accessories, knitted or crocheted	Chapter 61
37. Articles of apparel and clothing accessories, not knitted or crocheted	Chapter 62
38. Other made up textile articles; sets; worn clothing and worn textile articles; rags	Chapter 63
39. Footwear, gaiters and the like; parts of such articles	Chapter 64
40. Headgear and parts thereof	Chapter 65
41. Umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof	Chapter 66
42. Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair	Chapter 67
43. Articles of stone, plaster, cement, asbestos, mica or similar materials	Chapter 68
44. Ceramic products	Chapter 69
45. Glass and glassware	Chapter 70
46. Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewellery; coins	Chapter 71
47. Iron and steel	Chapter 72
48. Articles of iron or steel	Chapter 73

	Harmonized System (HS) nomenclature
49. Copper and articles thereof	Chapter 74
50. Nickel and articles thereof	Chapter 75
51. Aluminium and articles thereof	Chapter 76
52. Lead and articles thereof	Chapter 78
53. Zinc and articles thereof	Chapter 79
54. Tin and articles thereof	Chapter 80
55. Other base metals; cermets; articles thereof	Chapter 81
56. Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal	Chapter 82
57. Miscellaneous articles of base metal	Chapter 83
58. Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof; except for: 84.71: Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included	Chapter 84
59. Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles, limited to: 85.10: Shavers, hair clippers and hair-removing appliances, etc. 85.16: Water heaters and immersion heaters, etc. 85.37: Boards, panels, consoles, desks, cabinets and other bases, etc. 85.38: Parts suitable for use with the apparatus of heading 85.35, 85.36 or 85.37 85.39: Electric filament or discharge lamps, etc. 85.40: Thermionic or cold cathode valves and tubes, etc.	Chapter 85
60. Railway or tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds	Chapter 86

	Harmonized System (HS) nomenclature
61. Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof; except for: 87.05: Special purpose motor vehicles (for example, breakdown lorries, crane lorries, fire fighting vehicles, concretemixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units) 87.08: Parts and accessories of the motor vehicles of headings 87.01 to 87.05 87.10: Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons, and parts of such vehicles	Chapter 87
62. Ships, boats and floating structures	Chapter 89
63. Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof; except for: 90.14: Direction finding compasses; other navigational instruments and appliances 90.15: Surveying (including photogrammetrical surveying) or geophysical instruments and appliances, etc. 90.27: Instruments and apparatus for physical or chemical analysis, etc. 90.30: Oscilloscopes, etc.	Chapter 90
64. Clocks and watches and parts thereof	Chapter 91
65. Musical instruments; parts and accessories of such articles	Chapter 92
66. Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings	Chapter 94
67. Toys, games and sports requisites; parts and accessories thereof	Chapter 95
68. Miscellaneous manufactured articles	Chapter 96
69. Works of art, collectors' pieces and antiques	Chapter 97

2 Supplies of goods outside the scope of international treaties

Other goods

Services

1 Services within the scope of international treaties

The services listed below are deemed to be services within the scope of international treaties:

	UN Central Product Classification (CPC prov) reference no.
1. Maintenance and repair services	6112, 6122, 633, 886
2. Hotel and other similar accommodation services	641
3. Food and beverage serving services to be consumed on site	642, 643
4. Land transport services, including armoured car services and courier services; except transport of mail	712 (except 71235), 7512, 87304
5. Air transport services of passengers and freight, except transport of mail	73 (except 7321)
6. Transport of mail by land (except rail) and by air	71235, 7321
7. Travel agency and tour operator services	7471
8. Telecommunication services	752
9. Insurance, banking and investment services, except transactions in securities or other financial instruments, and central bank services	ex. 81, 812, 814
10. Real estate services on a fee or contract basis	822
11. Leasing or rental services concerning machinery and equipment without operator	83106–83109
12. Leasing or rental services concerning personal and household goods	ex. 832
13. Computer and related services	84
14. Legal advisory services on home country law and international law	ex. 861
15. Accounting, auditing and bookkeeping services	862
16. Taxation services	863

	UN Central Product Classification (CPC prov) reference no.
17. Market research and public opinion polling services	864
18. Management consulting services and related services	865, 866 ²¹
19. Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867
20. Advertising services	871
21. Building-cleaning services and property management services	874, 82201–82206
22. Packaging services	876
23. Consulting services relating to forestry	ex. 8814
24. Publishing and printing services on a fee or contract basis	88442
25. Sewage and refuse disposal; sanitation and similar services	94

2 Services outside the scope of international treaties

Other services

21 Except arbitration and conciliation services

Annex 4
(Art. 8 para. 4, Art. 16 and Art. 20 para. 1)

Threshold values²²

1 Thresholds for procurements within the scope of international treaties

1.1 Protocol of 30 March 2012 amending the Agreement on Government Procurement and free trade agreements

Open or selective procedure

Contracting authority	Construction work (total value)	Supplies of goods	Services
Contracting authority under Art. 4 para. 1	from CHF 8 700 000	from CHF 230 000	from CHF 230 000
Contracting authority under Art. 4 para. 2 lit. a–e	from CHF 8 700 000	from CHF 700 000	from CHF 700 000

1.2 Agreement of 21 June 1999 between the European Community and the Swiss Confederation on certain aspects of government procurement

Open or selective procedure

Contracting authority	Construction work (total value)	Supplies of goods	Services
Contracting authority under Art. 4 para. 2 lit. f–h	from CHF 8 000 000	from CHF 640 000	from CHF 640 000

²² The threshold values in Swiss francs apply for the years 2016 and 2017.

2 Thresholds and procedures outside the scope of international treaties

Open or selective procedure

Contracting authority	Construction work (total value)	Supplies of goods	Services
Contracting authority under Art. 4 para. 1	from CHF 2 000 000	from CHF 230 000	from CHF 230 000
Contracting authority under Art. 4 para. 2 lit. a–e	from CHF 2 000 000	from CHF 700 000	from CHF 700 000
Contracting authority under Art. 4 para. 2 lit. f–h	from CHF 2 000 000	from CHF 640 000	from CHF 640 000

Invitation procedure

All contracting authorities	from CHF 300 000	from CHF 150 000	from CHF 150 000
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Direct award procedure

All contracting authorities	under CHF 300 000	under CHF 150 000	under CHF 150 000
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Annex 5
(Art. 8 para. 5, Art. 48 para. 1 and Art. 52 para. 5)

Public contracts outside the scope of international treaties

1. The following are deemed to be public contracts outside the scope of international treaties:
 - a. procurements which are not covered by the lists of subjected goods, work and services referred to in section 1 of Annexes 1-3 or whose contract value is below the thresholds set out in Annex 4;
 - b. the delegation of public tasks and the granting of concessions as described in Article 9;
 - c. the procurement of weapons, ammunition, war material and, provided they are essential for defence and security purposes, other supplies of goods, construction work, services and research or development services;
 - d. public contracts for international development cooperation and international cooperation with Eastern Europe, humanitarian aid and peacebuilding and human security, insofar as a procurement is not excluded from the scope of this Act.
2. The following provisions additionally apply to public contracts outside the scope of international treaties:
 - Article 6 paragraph 2
 - Article 16 paragraphs 4 and 5
 - Article 20
 - Article 29 paragraph 2
 - Article 42 paragraph 1
 - Article 46 paragraph 4
 - Article 52 paragraph 2

ILO Core Conventions

The following conventions are deemed to be ILO core conventions for the purposes of Article 12 paragraph 2:

1. Convention No. 29 of 28 June 1930²³ concerning Forced or Compulsory Labour
2. Convention No. 87 of 9 July 1948²⁴ concerning Freedom of Association and Protection of the Right to Organise
3. Right to Organise and Collective Bargaining Convention No. 98 of 1 July 1949²⁵
4. Convention No. 100 of 29 June 1951²⁶ concerning Equal Remuneration for Men and Women Workers for Work of Equal Value
5. Convention No. 105 of 25 June 1957²⁷ concerning the Abolition of Forced Labour
6. Convention No. 111 of 25 June 1958²⁸ concerning Discrimination in Respect of Employment and Occupation
7. Convention No. 138 of 26 June 1973²⁹ concerning the Minimum Age for Admission to Employment
8. Convention No. 182 of 17 June 1999³⁰ concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

²³ SR **0.822.713.9**

²⁴ SR **0.822.719.7**

²⁵ SR **0.822.719.9**

²⁶ SR **0.822.720.0**

²⁷ SR **0.822.720.5**

²⁸ SR **0.822.721.1**

²⁹ SR **0.822.723.8**

³⁰ SR **0.822.728.2**

Repeal and amendment of other legislative instruments

I

The Federal Act of 16 December 1994 on Public Procurement³¹ is repealed.

II

The legislative instruments below are amended as follows:

1. Federal Act of 20 December 1968 on Administrative Procedure³²

Art. 22a para. 2

² Paragraph 1 does not apply in proceedings relating to:

- a. the granting of suspensive effect and other precautionary measures;
- b. public procurements.

2. Federal Act of 17 June 2005 on the Federal Supreme Court³³

Art. 46 para. 2

² Paragraph 1 does not apply in proceedings relating to:

- a. the granting of suspensive effect and other precautionary measures;
- b. enforcement of bills of exchange;
- c. matters relating to voting rights (Art. 82 lit. c);
- d. international mutual assistance in criminal matters and international administrative assistance in tax matters;
- e. public procurements.

³¹ AS 1996 508, 1997 2465, 2006 2197, 2007 5635, 2011 5659 6515, 2012 3655, 2015 773, 2017 7267 7563

³² SR 172.021

³³ SR 173.110

Art. 83 lit. f

The following may not be challenged by way of appeal:

- f. decisions in the area of public procurement if:
 - 1. there is no question of law of fundamental importance; the right to appeal against procurements of the Federal Administrative Court, the Federal Criminal Court, the Federal Patent Court, the Office of the Attorney General of Switzerland and the higher cantonal courts is reserved, or
 - 2. the estimated value of the contract to be awarded does not reach the relevant threshold value set out in Article 52 paragraph 1, in conjunction with Annex 4 section 2 of the Federal Act of 21 June 2019 on Public Procurement³⁴;

3. Federal Act of 5 October 2007 on the Promotion of Switzerland as a Business Location³⁵

Art. 3 para. 1bis

^{1bis} The mandate to promote Switzerland as a business location in accordance with this Act is not deemed to be a public contract within the meaning of Article 9 of the Federal Act of 21 June 2019 on Public Procurement³⁶.

Art. 5 para. 1 lit. e

¹ The commissioned party is obliged to:

- e. comply with the provisions of the Federal Act of 21 June 2019 on Public Procurement³⁷ and the associated Ordinance in relation to third parties, insofar as these are applicable.

³⁴ SR ...

³⁵ SR **194.2**

³⁶ SR ...

³⁷ SR ...

4. Federal Act of 5 October 1990 on Financial Assistance and Subsidies³⁸

Art. 10 para. 1 lit. e

¹ Provisions governing compensation are to be based on the following principles:

- e. The following are to be regulated:
 - 1. a transparent, objective and impartial selection procedure if several recipients are candidates for the delegation of public tasks in accordance with Article 3 paragraph 2 letter b,
 - 2. the legal form of the delegation, the requirements relating to the delegation of tasks and legal remedies; if legal remedies are not regulated, Article 35 paragraph 1 applies,
 - 3. the consequences of failure to perform the task or inadequate performance of the task,
 - 4. the consequences of misappropriation and sale of objects in respect of which compensation is paid for a specific use.

Art. 11

Repealed

Heading preceding Art. 15a

Section 2: Conditions for the Granting of Financial Assistance and Compensation

Art. 15a Request for financial assistance

Financial assistance is granted only upon request.

Art. 15b Delegation of federal tasks with compensation

¹ Unless special legislation provides otherwise, the selection procedure for the delegation of federal tasks for which several recipients are candidates and for which compensation is granted is based on the provisions of the Federal Act of 21 June 2019 on Public Procurement³⁹ in the case of procurements outside the scope of international treaties, subject to the following provisions.

³⁸ SR 616.1

³⁹ SR ...

² The initiation of the selection procedure is published in the Federal Gazette in accordance with Article 13 paragraph 1 letter g of the Publications Act of 18 June 2004⁴⁰. The selection procedure is concluded with the notification of a decision to all participants in the procedure. The legal remedies are based on Article 35 paragraph 1 of this Act.

³ The delegation and the compensation following a concluded selection procedure with legal effect are governed by Articles 14 to 40 of this Act.

Art. 15c Duty to provide information

¹ Anyone requesting financial assistance or applying for the delegation of a federal task must provide the competent authority with all necessary information. He or she must also allow the authority to inspect the files and grant it access on site.

² The duties under paragraph 1 continue to apply even after the granting of financial assistance or the delegation of federal tasks in order for the competent authority to be able to carry out the necessary controls and clarify refund claims.

Heading preceding Art. 16

Repealed

Art. 17 para. 4

⁴ If there are indications that the recipient of financial assistance is procuring goods, services or construction work and using federal financial assistance to finance more than 50% of the total costs, the authority may require the recipient to ensure appropriate competition. As a rule, at least three quotes must be obtained for this purpose.

Art. 20 para. 1

¹ Article 17 applies to the content of the request and the contract.

Art. 30 para. 2^{bis}

^{2^{bis}} Financial assistance may be entirely or partially withdrawn or reclaimed if the recipient violates procurement law when using these funds.

⁴⁰ SR 170.512

5. Railways Act of 20 December 1957⁴¹

Art. 5 para. 5

⁵ An infrastructure licence in accordance with this Act is not deemed to be a public contract as described in Article 9 of the Federal Act of 21 June 2019 on Public Procurement⁴².

6. Federal Act of 20 March 2009 on Passenger Transport⁴³

Art. 6 para. 5

⁵ A passenger transport licence in accordance with this Act is not deemed to be a public contract as described in Article 9 of the Federal Act of 21 June 2019 on Public Procurement⁴⁴.

7. Federal Act of 6 October 1995 on the Internal Market⁴⁵

Art. 5 para. 1 first and second sentence (concerns only the Italian text) and third sentence

¹ ... If a procurement or the granting of a monopoly is based on the intercantonal agreement concluded by the cantons on the basis of the Protocol of 30 March 2012 amending the Agreement on Government Procurement⁴⁶, it is presumed that the requirements of this Act are met.

Art. 9 paras. 1 and 2

¹ Restrictions on free market access must be issued in the form of a ruling.

² Cantonal law provides for at least one legal remedy involving an authority that is independent of the administration. In the case of public procurements, this applies:

- a. if the value of a contract equals or exceeds the threshold value for the invitation procedure under cantonal or intercantonal public procurement law;

⁴¹ SR 742.101

⁴² SR ...

⁴³ SR 745.1

⁴⁴ SR ...

⁴⁵ SR 943.02

⁴⁶ SR ...; BBl 2017 2175

- b. if a tenderer is included in or removed from a list and if a sanction is imposed;
- c. if it is claimed that the contract must be put out to public tender in accordance with the relevant regulations.

8. Federal Act of 6 October 2000 on Export Promotion⁴⁷

Art. 3 para. 1^{bis}

^{1bis} An export promotion mandate in accordance with this Act is not deemed to be a public contract as described in Article 9 of the Federal Act of 21 June 2019 on Public Procurement⁴⁸.

Art. 5 para. 1 lit. f

¹ The commissioned party is obliged to:

- f. comply with the provisions of the Federal Act of 21 June 2019 on Public Procurement⁴⁹ and the associated Ordinance in relation to third parties, insofar as these are applicable.

⁴⁷ SR **946.14**

⁴⁸ SR ...

⁴⁹ SR ...