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The Legal 500 Country Comparative Guides Switzerland **PUBLIC PROCUREMENT**

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The logo for Bratschi, featuring the word "bratschi" in a lowercase, sans-serif font. The text is white and is set against a dark rectangular background.

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This country-specific Q&A provides an overview of public procurement laws and regulations applicable in Switzerland.

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SWITZERLAND PUBLIC PROCUREMENT



1. Please summarise briefly any relationship between the public procurement / government contracting laws in your jurisdiction and those of any supra-national body (such as WTO GPA, EU, UNCITRAL)

To the extent that the WTO GPA contains detailed provisions, these are applied directly by Swiss contracting authorities and courts. Where this is not the case, the provisions require implementation in national law (Confederation, cantons and possibly municipalities).

Switzerland is not a member of the EU, but is associated with the EU through the Bilateral Agreements. Within the framework of the Bilateral Agreements, Switzerland has implemented the agreement between the EU and Switzerland on certain aspects of public procurement on June 1, 2002. According to this agreement, the GPA is extended to include public procurement in the municipalities and districts. Furthermore, the agreement covers public procurement by companies in the sectors of rail transport, telecommunications and gas and water supply. However, there is also an opt-out clause that can be invoked by municipalities in particular, provided that there is effective competition. The provisions of the agreement with the EU have also been incorporated into Swiss law, i.e. into the FAPP (Federal Act on Public Procurement) and the IAPP (Intercantonal Agreement on Public Procurement) applicable to the cantons and municipalities. It should be noted that both legal bases have been revised recently and the scopes of application have been aligned with the state treaties (art. 4 FAPP/IAPP; see question 2). The revised FAPP has entered into force on January 1, 2021, the IAPP will still have to be ratified by the cantons before entering into force and being transposed into cantonal law by the cantons. The cantons are in the process of drafting the relevant laws therefore.

Switzerland is not subject to the jurisdiction of the EU. It has adopted the EU case law only until June 1, 2002. However, Swiss courts nevertheless refer to the case law of the EU Court of Justice as an aid to interpret domestic

law. The revised FAPP and the revised IAPP also reflect the development of the latest case law of the ECJ.

2. What types of public procurement / government contracts are regulated in your jurisdiction and what procurement regimes apply to these types of procurements?

In Switzerland, there is the open, the selective and the invitation procedure as well as the direct award (art. 17 et seq. FAPP; art. 17 IAPP). The procedure applied mostly depends on the threshold values, i.e. the contract values.

The open procedure is the standard public procurement procedure consisting of the invitation to tender, the submission of the bids (art. 18 FAPP; art. 18 IAPP), the evaluation of the same and the award of the contract.

The selective procedure contains two stages. In the first stage, the contracting authority publicly announces the procurement and invites bidders to submit applications for participation. At this stage, it is only examined whether the bidders are suitable and comply with the conditions for participation. In the second stage, the bidders then submit their bids, which are evaluated. The procedure concludes with the award of the contract (art. 19 FAPP/IAPP).

The invitation procedure only applies outside the scope of the GPA and according to certain threshold values (art. 20 FAPP/IAPP).

Finally, the direct award allows for the direct award of a contract without a call for tenders. It is only applicable if either the contract in question is of minor value or the specific requirements for a direct award procedure are met (art. 21 FAPP/IAPP).

In addition to any central government procurement regime please address the following: regulated utilities suppliers (e.g. water, gas, electricity, coal, oil, postal services, telecoms,

ports, airports) military procurements non-central government (local, state or prefectures) and any other relevant regime. Please provide the titles of the statutes/regulations that regulates such procurements.

Art. 4 FAPP and art. 4 IAPP list the contracting entities that are subject to public procurement law. The subordination of the different sectors (drinking water, energy, air traffic, shipping, post office, railroad, gas or heat, solid fuels) takes place only in the ranges, in which no competition prevails, in particular regarding the grids, which represent a natural monopoly and only so far, as it concerns the basic supply of the population. As soon as the subjective scope is fulfilled, the FAPP and the IAPP fully apply and the above-mentioned procedures become applicable.

The federal government has opted out with regard to telecommunication and standard-gauge rail freight transport because there is now sufficient competition in these areas.

Switzerland has centralized military competencies. Therefore, cantons and municipalities are not responsible in this area. However, police competencies are the responsibility of the cantons and municipalities. For military procurements at the federal level as well as procurements at the cantonal level that serve internal and external security, Switzerland reserves the right not to apply public procurement law (art. 10 para.4 a. FAPP; art. 10 para 3a. IAPP). At federal level, however, further differentiation is made with regard to military procurements. The procurement of civil material for defense and security is subject to the FAPP (Annex 2 para. 1.2 FAPP). For weapons, ammunition, etc., the invitation procedure applies in accordance with art. 20 para. 3 FAPP and Annex 5 para. 1c FAPP. An equivalent provision for the cantonal or municipal level is missing in the IAPP.

3. Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction?

Swiss public procurement law basically divides between supplies, services and construction work.

Switzerland distinguishes between the thresholds for procurements within the scope of the GPA and the agreement with the EU and outside the scope of international treaties. In the scope of the GPA and the agreement with the EU, the thresholds according to the GPA and the agreement with the EU apply. Outside the scope of the state treaties, domestic thresholds apply.

Federal government (Annex 4 FAPP):

Public procurement must take place in accordance with the GPA for construction work from a threshold of CHF 8,700,000.-, for supplies from a threshold of CHF 230,000 and for services from a threshold of CHF 230,000 with regard to contracting authorities within the central administration. For public companies in the water, energy and transport sectors, CHF 8,700,000 also applies as the threshold value for construction work, for services and supplies the threshold value is CHF 700,000. -, except for public authorities and railroad transport companies for the provision or operation of railroads including the transport carried out thereon, in the field of gas or heat as well as in the field of solid fuels (extraction and search) (cf. art. 4 para. 2 lit. f - h FAPP). According to the agreement with the EU, a threshold of CHF 8,000,000 applies to these sectors for construction work and a threshold of CHF 640,000 each for supplies and services.

Outside the scope of the state treaties, the open or selective procedure also applies generally at a threshold value of CHF 2,000,000 for construction work, and of CHF 230,000 for supplies and services, if an authority of the central administration is the contracting authority. For public or private companies in the water, energy and transport sectors (cf. Annex 4 FAPP and art. 4 para. 2 FAPP), the threshold value for construction work is also CHF 2,000,000 and for supplies and services CHF 700,000 and 640,000 respectively.

The invitation procedure applies for all contracting authorities for construction work at a threshold value of CHF 300,000 and for supplies and services of CHF 150,000.

Below these thresholds, construction work, supplies and services may be awarded by direct award.

Cantonal governments (Annex 1 IAPP):

Also in the IAPP, a distinction is made between the scope of the GPA and the agreement with the EU and the area outside the scope of the state treaties. At cantonal level, the thresholds within the scope of the GPA are partly higher than at federal level. For the cantonal authorities of the central administration, a threshold of CHF 8,700,000 applies for construction work, and a threshold of CHF 350,000 each for services and supplies. For authorities and public companies in the water, energy, transport and telecommunication sectors, a threshold of CHF 8,700,000 applies for construction work and a threshold of CHF 700,000 for supplies and services.

At the municipal level, the same threshold values apply to municipal authorities and sector companies.

Municipalities are not directly subject to the GPA, but are also bound by it through the agreement with the EU.

Outside the scope of the state treaties, the open or selective procedure applies for construction work in the main construction industry from a threshold of CHF 500,000 and in the ancillary construction industry from a threshold of CHF 250,000, for services and supplies from a threshold of CHF 250,000 each. The invitation procedure applies in the main construction industry for contract values below CHF 500,000 and in the ancillary construction industry, as well as for supplies and services, for contract values below CHF 250,000. Below these thresholds, a direct award of the contract is permitted.

4. Are procurement procedures below the value of the financial thresholds specified above subject to any regulation in your jurisdiction? If so, please summarise the position.

In Swiss law, special provisions apply in particular to direct awards, i.e. below the thresholds of the invitation procedure. These direct awards do not have to be publically announced, neither at cantonal nor at federal level. Nevertheless, the general principles for the awarding of contracts still apply, in particular the principles of transparency, objectivity and impartiality. Measures must be taken against conflicts of interest and inadmissible agreements on competition and corruption must be avoided, furthermore, equal treatment of suppliers must be guaranteed, etc. (art. 11 FAPP/IAPP). In addition, the general conditions of participation apply to the suppliers, in particular the occupational health and safety provisions and the requirement of equal pay for men and women (Art. 12 FAPP/IAPP).

Finally, the direct award is not published (cf. art. 48 FAPP/IAPP) and is not subject to appeal to the court (art. 52 FAPP/IAPP).

5. For the procurement of complex contracts*, how are contracts publicised? What publication or journal is used for these purposes?

There is no special publication medium for complex contracts in Switzerland. Complex contracts are also published on Simap (www.simap.ch). Complex contracts regularly occur within the scope of the international treaties. If the invitation to tender is not issued in an official language of the WTO, a summary must be issued at the same time in an official language of the WTO (art.

48 para. 4 FAPP/IAPP). Only a brief summary is published on Simap. The detailed tender documents must be requested from the contracting authority.

The time limit for submitting bids is at least 40 days; shortening the time limit to at least 10 days is permissible, but is rarely encountered in complex contracts (art. 46 f. FAPP/IAPP). Experience shows, however, that the deadlines are often longer than 40 days. If a survey must take place, it may well take 2 to 3 months or more.

In the selective procedure, which is mainly used for complex contracts, the time limit for the submission of requests to participate is at least 25 days and for the submission of tenders at least 40 days from the invitation to tender (art. 46 para. 2 lit. b FAPP/IAPP).

6. For the procurement of complex contracts, where there is an initial selection stage before invitation to tender documents are issued, what are typical grounds for the selection of bidders?

In the selective procedure, the suitability criteria and compliance with the conditions for participation will be verified first in order to enable participation in the tendering process (cf. art. 27 FAPP/IAPP). The bidders must prove that they are capable of executing the contract. The suitability criteria regularly relate to the professional, financial, economic, technical or organizational capability and, in particular, the experience of the bidder. The suitability criteria must be objectively necessary and verifiable with regard to the procurement project. However, the contracting authority has a wide scope of discretion. The extent to which the suitability criteria must be met by a bidding consortium is determined by the tender documents. The members of a bidding consortium may also complement each other. In principle, all bidders who meet the suitability criteria must be admitted to participate. However, limitations in terms of numbers are possible in justified cases.

The same principles apply to utility companies. Art. 27 FAPP/IAPP expressly require that the suitability criteria must be aligned with the procurement project so that the criteria have to be tailored to the specific award.

7. Does your jurisdiction mandate that certain bidders are excluded from tendering procedures (e.g. those with convictions for bribery)? If so what are

those grounds of mandatory exclusion?

Pursuant to art. 44 FAPP, a contracting authority may exclude a bidder from the tendering procedure for various reasons, for example if it is established that the requirements for participation in the procedure are not or are no longer fulfilled, or the legally compliant conduct of the tendering procedure is impaired by the behaviour of a bidder. Furthermore, if a bidder is subject to seizure or bankruptcy proceedings. Exclusion is also possible if there are sufficient indications that the bidder, its organs, a deployed third party or its organs have made false or misleading statements and information to the contracting authority or are insolvent.

Furthermore, according to the FAPP a contracting authority or the authority competent by law may exclude a bidder or subcontractor for specific reasons for a period of up to five years from public procurements (cf. art. 45 para. 1 FAPP).

Such reasons may be the following:

1. Existence of a legally binding conviction for an offence against the contracting authority or for a felony;
2. Violation of anti-corruption provisions;
3. In case of agreements which aim to impair fair competition between bidders;
4. Failure to comply with labour protection provisions, working conditions, provisions on equal treatment of women and men with regard to equal pay, failure to comply with provisions on confidentiality and provisions of Swiss environmental law or with international conventions on the protection of the environment designated by the Federal Council;
5. Violation of reporting or licensing obligations under the Federal Act against Clandestine Employment.

An exclusion pursuant to art. 45 para. 1 is recorded on a central list ("blacklist"), in each case stating the reasons as well as the duration of the exclusion (art. 45 para. 3 FAPP).

8. Please describe a typical procurement procedure for a complex contract. Please summarise the rules that are applicable in such procedures.

The FAPP defines various types of procurement procedures, i.e. open procedure, selective procedure, invitation procedure and direct award. In the case of

complex contracts, intellectual services or the procurement of innovative services, a contracting authority may conduct a dialogue within the scope of an open or selective procedure with the aim of specifying the subject matter of the service as well as identifying and defining the solutions or procedures. Complex procurements include, for example, the procurement of IT applications with the integration of a large number of linked individual solutions.

If the selective procedure is chosen, the requests to participate shall be submitted in a first step and the bidders invited for the bidding phase shall be selected on the basis of the suitability criteria. The selection is to be decreed (prequalification decision). The following process and content of the dialogue with the selected bidders must be comprehensibly recorded and documented. As soon as the solution has been worked out in dialogue, the definitive offers are requested either from several bidders or only from one. If several definitive offers are filed, they are evaluated with the help of the tender criteria communicated in the tender documents. The award is made and decreed, and as soon as it is legally binding, the contract is concluded.

A public procurement procedure for a complex contract usually lasts between one and two years.

9. If different from the approach for a complex contract, please describe how a relatively low value contract would be procured?

In general, for a relatively low value contract the same regulations are applicable as for the procurement of high value contracts. However, the thresholds set out in the FAPP/ IAPP determine which procedure is to be applied under public procurement law. Depending on the estimated contract value, simplifications may apply (e.g. the invitation procedure, where the contracting authority determines which bidder is invited to submit a bid without a public invitation to tender, or the direct award, where the contract is awarded directly by the contracting authority).

10. What is seen as current best practice in terms of the processes to be adopted over and above ensuring compliance with the relevant regime, taking into account the nature of the procurement concerned?

The FAPP requires that award decisions must be summarily substantiated (cf. art. 51 para 2 and 3 FAPP). The substantiation shall include the following aspects:

the nature of the procedure and the name of the selected bidder; the total price of the tender considered or, exceptionally, the lowest and the highest total prices of the tenders included in the procurement procedure; the relevant characteristics and advantages of the selected bidder; if applicable, a statement of the reasons for a direct award. If a contracting authority provides a more detailed substantiation beyond these requirements, this can be considered as best practice. Thus, the unsuccessful bidders are in a better position to decide whether or not to challenge the award decision.

11. Please explain any rules which are specifically applicable to the evaluation of bids.

Bids are evaluated by the contracting authority on the basis of the award criteria set forth in the tender documents, which also should include a weighing of the award criteria (cf. art. 29 para 3 FAPP/IAPP). In addition to the price and quality of a service, the contracting authority shall take into account in particular criteria such as appropriateness, deadlines, technical value, economic efficiency, life cycle costs, aesthetics, sustainability, plausibility of the offer, the different price levels in the countries in which the service is provided, reliability of the price, creativity, customer service, delivery conditions, infrastructure, innovation content, functionality, service availability, professional competence or efficiency of the methodology (cf. art. 29 para 1 FAPP/IAPP). For standardised services, the award may be made exclusively on the basis of the criterion of the lowest total price provided that high sustainability requirements are guaranteed (cf. art. 29 para 4 FAPP/IAPP).

12. Please describe any rights that unsuccessful bidders have that enable them to receive the reasons for their score and (where applicable in your jurisdiction) the reasons for the score of the winning bidder.

The contracting authority is obliged to communicate its decision to the bidders (art. 51 para. 1 FAPP, art. 51 para. 1 IAPP). However, the bidders are not entitled to be heard before the decision is issued. The decision shall be reasoned summarily and include instructions about the right of appeal (art. 51 para. 2 FAPP, art. 51 para. 2 IAPP). The summarised reasoning must include the type of procedure, the name of the successful bidder, the total price of the bid, as well as the significant characteristics and advantages of the successful bidder

(see question Nr. 10 above). Such information, however, must not be communicated if the disclosure would be contrary to the public interest or the legitimate business interests of a bidder or would impair free and fair competition. In the event of an exceptional direct award, the decision shall also state the reasons therefor (art. 51 para. 3 FAPP, art. 51 para. 3 IAPP). In addition, it is possible to conduct a debriefing interview with unsuccessful bidders at their request. However, in practice, the precise assessment is most often only submitted by the contracting authority during the appeal procedure.

The contracting authority may only award the contract to the successful bidder after the expiry of the unused appeal period (art. 42 para. 2 FAPP, art. 42 para. 1 IAPP). Since the decision has to include a summarised reasoning, the unsuccessful bidders thus have at least a rough overview of the reasons before the contract is awarded. But, as described above, the precise assessment is often only disclosed during the appeal procedure. During an appeal proceeding, the contract may be awarded unless the competent appeal authority grants suspensive effect to the appeal.

13. What remedies are available to unsuccessful bidders in your jurisdiction?

The decision by the contracting authority might at federal level usually be appealed to the Federal Administrative Court. At cantonal level, an appeal can typically be lodged with the cantonal administrative courts. Generally, the appeal has no suspensive effect, which means that the contracting authority can award the contract during the appeal procedure (art. 54 para. 1 FAPP, art. 54 para. 1 IAPP). However, the courts may grant suspensive effect to an appeal on request if the appeal appears to be sufficiently substantiated and no conflicting public interests prevail (art. 54 para. 2 FAPP, art. 54 para. 2 IAPP). If suspensive effect is granted, the contract may not be awarded during the appeal proceedings and thus, the appeal may result in an award of the contract. If the contract has already been legitimately awarded during the appeal proceedings because suspensive effect was not granted, the court may not dissolve the contract but, at most, award compensation for damages.

Besides, it shall be pointed out that legal remedies at federal level are subject to certain thresholds. In the case of supplies and services, an appeal is admissible from CHF 150,000 per individual purchase order, and from CHF 2 million in the case of construction work (art. 52 para. 1 FAPP). Furthermore, outside the scope of the GPA legal remedies are even more limited. Firstly, in this

area, only a declaration of the unlawfulness of the decision can be reached and it is therefore not possible to reach the awarding of a contract in the appeal procedure. And secondly, foreign bidders are only admitted to appeal if the state in which they are domiciled grants reciprocal rights (art. 52 para. 2 FAPP). At cantonal level, the limitation of legal remedies is regulated in different ways. Finally, it should be noted that legal remedies regarding the imposition of sanctions are always available without restriction. The contract values are irrelevant in this respect (art. 53 para. 4 FAPP).

At federal level, the appeal period is 20 days, whereby no court holidays apply (art. 56 para. 1 FAPP). At cantonal level, following the implementation of the new IAPP, the appeal period will now also last 20 days (art. 56 para. 1 IAPP).

14. Are public procurement law challenges common in your jurisdiction?

Public procurement law challenges are quite common in Switzerland.

Challenges against decisions rendered by contracting authorities do most commonly not result in reputational harm or harm for future prospects of the claimant since the public administration in Switzerland acts very professionally. However, it is always advisable to thoroughly assess whether to challenge a decision by a contracting authority in order to avoid time consuming but unsuccessful claims. Nevertheless, since the precise assessment of the selection of the successful bidder is often only disclosed in the appeal procedure, it is sometimes unavoidable to challenge a decision.

The costs that are to be expected consist of the court fees and the lawyer's fees. The court fees and part of the lawyer's fees will be refunded if the claim is successful. In total, depending on the complexity of the case, costs of CHF 15,000-20,000 must certainly be expected for the proceedings before the first appeal instance, whereby the costs for the claimant are usually higher than for the defendant since the defendant has the contracting authority on his side.

15. Typically, assuming a dispute concerns a complex contract, how long would it take for a procurement dispute to be resolved in your jurisdiction (assuming neither party is willing to settle its case).

Depending on the contracting authority (federal or

cantonal level), the award decision can be appealed either to a cantonal administrative court or to the Federal Administrative Court. The duration of the first instance appeal procedure varies considerably depending on the complexity of the case and the procedural conduct of the parties. However, a duration of at least six months to three quarters of a year must be expected. If suspensive effect has been granted, the courts tend to take more time to render a decision.

Under certain conditions, the decision of the first appeal instance can further be appealed to the Federal Supreme Court. Again, the length of the procedure before the Federal Supreme Court can also vary considerably. A minimum duration of three quarters of a year is to be expected, but the procedure might also take considerably longer than a year.

16. What rights/remedies are given to bidders that are based outside your jurisdiction?

According to art. 6 para. 1 FAPP bidders from other countries enjoy non-discriminatory market access if such access is based on an obligation imposed on Switzerland by an international treaty (so-called "privileged bidders"). On the one hand, the bidder needs to originate from a state with which Switzerland has concluded an international treaty, and on the other hand, the specific contract needs to be covered by Switzerland's international obligation. The rule primarily refers to the GPA.

Outside the scope of an international treaty, foreign bidders shall be admitted to the tender if their state of origin grants reciprocal rights or if the contracting authority permits them to participate (art. 6 para. 2 FAPP). Also, foreign bidders are - outside the scope of an international treaty - only admitted to an appeal if their state grants the respective reciprocal rights (art. 52 para. 2 FAPP).

If foreign bidders are eligible and participate in tender procedures, they must fully comply with the minimum qualification requirements set out by the law and the contracting authority (see for example art. 12 FAPP regarding compliance with occupational health and safety regulations, working conditions, equal pay and environmental law). The requirements may result in de facto restrictions on the participation of foreign bidders in public procurement procedures (e.g. permits to be obtained for the performance of the contract).

17. Where an overseas-based bidder has a subsidiary in your territory, what are the applicable rules which determine whether a bid from that bidder would be given guaranteed access to bid for the contract?

In principle, the national subsidiary has the same rights and remedies as nationally owned companies. Even a subsidiary in a country that has been guaranteed market access by an international treaty is sufficient to be considered a privileged bidder, if the bid is actually submitted by the particular subsidiary and falls within the scope of the treaty. In any case, a (national or eligible non-national) bidder will have to prove full compliance with the conditions and requirements set out in the tender documents to be able to participate.

18. In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues?

In Switzerland, there is no court or tribunal dealing with public procurement issues only. However, appeals in public procurement cases are handled by administrative courts (or specialized departments of the cantonal courts) at the cantonal level and by the Federal Administrative Court at the federal level as the first instance of appeal. Thus, these courts do not deal with criminal and civil law cases, but are specialized in administrative law cases.

19. Are post-award contract amendments/variations to publically procured, regulation contracts subject to regulation in your jurisdiction?

In principle, only a contract that is concluded with the selected bidder and comprises the tendered subject based on the award decision is in conformity with public procurement law. Nevertheless, minor post-award contract amendments can hardly be avoided. Not permitted, however, are significant adjustments, unless these were provided for as options in the tender documents.

Furthermore, it should be noted that the contracting authority may exceptionally award a contract directly, irrespective of the applicable threshold, if a change of supplier for services to replace, supplement or extend services already rendered is not possible for economic or technical reasons, would cause considerable difficulties or entail substantial additional costs (art. 21 para. 2 FAPP, art. 21 para. 2 IAPP).

Changes to the identity of the supplier are at most permitted if they do not result in a change to the tender placement and the eligibility criteria are still completely fulfilled.

20. How common are direct awards for complex contracts (contract awards without any prior publication or competition)?

According to Annex 4 of the FAPP, the direct award procedure is always permissible for the procurement of construction work under CHF 300,000 and for supplies and services under CHF 150,000. If these thresholds are reached or exceeded, direct awards are only permitted if one of the exceptions listed in art. 21 para. 2 FAPP applies. According to established practice, the exceptions in art. 21 para. 2 FAPP are to be interpreted narrowly due to their exceptional character. These are all cases in which the open and selective procedures would not be practicable or appropriate. Complex procurements are primarily handled in the open or selective procedure.

Direct awards for complex contracts are conceivable if, due to the technical or artistic characteristics of the contract or for reasons of intellectual property protection, only one bidder can be considered and there is no adequate alternative (cf. art. 21 para. 2 lit. c FAPP) or if no bids or no requests to participate are received in the open procedure, in the selective procedure or in the invitation procedure, or if no bid meets the essential requirements of the tender or the technical specifications, or if no bidder meets the selection criteria (cf. art. 21 para. 2 lit. a FAPP).

The possible remedies for challenging the direct award are limited. In the context of a challenge of the award decision, it may be argued that the wrong type of procedure has been chosen.

21. Have your public procurement rules been sufficiently flexible to allow contracting authorities to respond to the COVID-19 pandemic? What measures have been most used and in what areas have any difficulties arisen? Is it likely that lessons learned from procurement during this period will give rise to longer term changes?

As the GPA, the FAPP provides for flexibilities that allow for public procurement without tendering, in particular

for reasons of extreme urgency due to unforeseeable events and/or in the case of measures to protect human health and life. The FAPP shall for example not apply to public contracts if this is deemed necessary for the protection and maintenance of external or internal security or public order or as far as it is necessary to protect the health or life of humans or to protect fauna and flora (cf. art. 10 para. 4 lit. a and b FAPP/art. 10 para. 3 IAPP).

Due to the Corona-pandemic, by decision of the Federal Council of 20 March 2020, the Military Pharmacy has been charged with the procurement of healthcare

equipment for the entire healthcare system. The procurements of the important medical goods were not subject to the ordinary public procurement law. Special Covid Regulations were applicable, which corresponds to art. 10 para. 4 FAPP.

In order to ensure the necessary transparency in public procurement and to be able to treat suppliers equally, a web-based procurement platform for market enquiries from the Military Pharmacy for medical products was created in collaboration with the Swiss MedTech association. The platform will also be used for future procurement lots.

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