

Act Church of Sweden's Procurement regulation for partners

2018-02-01

1. Introduction

Act Church of Sweden and its partner organisations manage entrusted funds for which they are accountable to both beneficiaries as well as public and private donors. All activities using the funds shall be characterized by the efficient use of resources, the promotion of good administrative practices and transparency in the management of funds, and the prevention of corruption.

The partner organisation is expected to have its own procurement policy and regulation. Procurement of goods or services using Act Church of Sweden's funds shall be carried out by the organisation in accordance with the organisation's procurement policy and regulation and this Act Church of Sweden's Procurement regulation for partners¹ applies as a minimum requirement.

The scope of procurement in this regulation is limited to commercial activities, such as those between the organisation and a contractor (usually a supplier of goods or services). The procurement regulation takes into consideration the requirements for procurement from Act Church of Sweden and its back donors, while promoting harmonisation to the extent possible. The rights and obligations of the organisation and the contractors which arise from the conclusion of a particular contract are governed by the terms of that contract and by the bidding documents, and not by this regulation. Further guidance on the definitions below and how to carry out procurements can be found in e.g. ECHO's Procurement Guidelines² with special regard to Open tender procedures.

2. Procurement principles

Procurement activities shall be characterised by good business practice, social responsibility and environmental considerations. The procurement shall be as economical and appropriate as possible for the organisation and for whomever that will benefit from the product or service. The organisation shall act professionally and implement appropriate procedures. Competitive opportunities that exist shall be utilised. Regardless of procedure used, the basic procurement principles of transparency including eligibility/exclusion, selection and award criteria, proportionality, equal treatment and non-discrimination, and ethical procurement which also includes avoidance of conflict of interests must be respected. The award criteria shall be best quality and value for money, taking into account environmental impact and what is ethically justifiable. With due regard to given criteria, the organisation shall award the contract to the tenderer that has been evaluated to have the economically most advantageous tender combining price and quality, and for contract for goods not containing after-sales services the lowest price. Definitions and explanations on the procurement principles are found in section 8 below.

¹The procurement policy for Act Church of Sweden, national level adopted by the Church (of Sweden) Board on 6 April 2016 constitutes the underlying steering document for this regulation.

²http://ec.europa.eu/echo/files/partners/humanitarian_aid/Procurement_Guidelines_en.pdf

3. Thresholds and associated procurement procedures

The contract category and value of a contract defines the applicable procurement procedure. The below table provides a summary of thresholds and an overview of requirements in the respective procedures. Further details on the procedures as well as on general rules for procurement are found in section 5.

Estimated contract value, incl. VAT	Procurement procedure	Procedure and contracting
<i>SIMPLE PROCEDURE</i>		
<EUR 40 000	Quotation (comparison of price)	Technical specification or Terms of reference Quotation (normally from 3 suppliers) Decision protocol (for purchases above EUR 10 000) Contract or purchase order including supplier’s acceptance of the organisation’s Code of Conduct (invoice if below EUR 2 000, receipt if below EUR 300)
<i>FORMAL PROCEDURES</i>		
EUR 40 000 – EUR 100 000 (goods) EUR 40 000 – EUR 300 000 (services)	Negotiated procedure	Invitation to Tender including technical specification or terms of reference and selection & award criteria. Invitation sent simultaneously to at least 3 suppliers. At least 14 calendar days for submission Procurement committee with at least 3 members Negotiate contract terms with one or several suppliers Decision protocol Contract including supplier’s acceptance of the organisation’s Code of Conduct Letter to unsuccessful tenderers and Award Notice
>EUR 100 000 – EUR 300 000 (goods)	Local Open Tender	Invitation to Tender including technical specification or terms of reference, selection & award criteria and model contract. Tender notice re: the Invitation in local press Invitation to Tender including all tender documents sent on demand At least 21 calendar days for submission Procurement committee with at least 3 members Decision protocol Contract including supplier’s acceptance of the organisation’s Code of Conduct Letter to unsuccessful tenderers and Award Notice
>EUR 300 000	International Open Tender	Invitation to Tender including technical specification or terms of reference, selection & award criteria and model contract. Tender notice re: the Invitation in international press Invitation to Tender including all tender documents sent on demand At least 30 calendar days for submission Procurement committee with at least 3 members Decision protocol Contract including supplier’s acceptance of the organisation’s Code of Conduct Letter to unsuccessful tenderers and Award Notice

4. Conditions for participation

Nationality

Participation in procurement implemented by the organisation shall be open on equal terms for any natural and legal persons, regardless of nationality.

Exclusion from participation in procurement

The situations of Exclusion as well as the procedure for the verification shall be explained in the tender documentation.

The organisation shall exclude candidates or tenderers from participation in procurement if:

- (a) they are bankrupt or are subject to liquidation, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) They have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
- (c) They have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they³ have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the objectives Act Church of Sweden has a mandate to support;

Tenderers must certify that the above exclusion criteria do not exist.

Points (a) to (d) of the first subparagraph shall not apply in the case of purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law."

Exclusion from contract award

Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:

- (a) are subject to a Conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information;
- (c) find themselves in one of the situations of Exclusion as per above in paragraph 2.2, for the procurement procedure in question.

³ This includes persons authorized to represent the tenderer, or having leading positions at the tenderer.

5. Rules for Procurement and its procedures

GENERAL

It may be considered reasonable to adapt requirements to local circumstances and legislation in respect of procurements. However, procurements shall always be conducted in accordance with good business practice with due regard to the procurement principles. The organisation shall also ensure that procurements take due consideration to requirements for environmentally sustainable development and the fundamental human rights as expressed in the ILO's Core Conventions⁴.

The organisation considering launching a procurement procedure has first to determine the object of the contract, i.e. its subject, duration and value. These characteristics will determine the type of contract and procurement procedure to be chosen. The technical content must be carefully set out in technical specifications or terms of reference, also indicating the estimated volume and type of contract (supplies, services or works) to be procured and which will constitute the basis for the evaluation of offers. The contract value is determined by the estimated costs of a lot including any additional services or options covered by the contract, and the estimated duration of the contract. Contracts must not be divided to evade a threshold.

SIMPLE PROCUREMENT PROCEDURE

Price enquiry

When the estimated contract value is below EUR 40 000 the procedure and documentation can be relaxed and be based on quotation. The aim is to retain some competition in order to obtain the best value for money while, based on the principle of proportionality, the documentation used may be simplified and there is no need for a formal procurement committee. Procurements above EUR 10 000 shall be documented in a decision protocol.

FORMAL PROCUREMENT PROCEDURES

For estimated contract values from EUR 40 000 and above formal procurement procedures apply.

Tender documents shall be established in accordance with international best practice. Tender documents refer to the Invitation to Tender, full specifications (technical specifications/terms of reference) and terms of the future contract. When a brand name is cited for the purpose of defining standards, the specifications should clearly indicate that no particular preference will be given to the specified brand names when evaluating the offers, and it should be followed by "or equivalent" to ensure that other brands are not discriminated against.

The Invitation to Tender (invitation to negotiate/call for proposal/request for proposal) shall be the same for all candidates. Information to include in the Invitation to Tender is: Background and subject of the procurement (Technical specifications or Terms of Reference) including estimated scope of work/volume and tender requirements and requests; Organisation of the procedure (rules governing the submission and presentation of offers including validity of tenders); Method of assessing offers (eligibility/exclusion, selection and award criteria); Deadline for submitting tenders; Date envisaged for adopting the award decision; Contract terms including the organisation's Code of Conduct for suppliers; Request for company presentation of tenderer including its work on sustainable

⁴ Conventions on Freedom of Association and Protection of the Right to Organise (nos. 87 and 98)
Conventions on Elimination of Forced and Compulsory Labour (nos. 29 and 105)
Conventions on Abolition of Child Labour (nos. 138 and 182)
Conventions on Elimination of Discrimination (nos. 100 and 111)

development. For simple procurement procedures the requirements on tender documents are less comprehensive, while observing the basic procurement principles.

The composition of the circle of organisations invited to tender should not constantly remain the same but should be varied from one time to another.

The deadline for the submission of tenders must be long enough to allow interested parties a reasonable and appropriate time, taking particular account of the complexity of the contract.

Before the deadline for submissions expires the organisation should answer any requests for clarifications from candidates in compliance with the principles of transparency and equal treatment. When questions are answered the response should be made available to all candidates while keeping the identity of the inquirer anonymous. Information requests received less than 5 days before the deadline may be legitimately rejected if they risk needlessly prolonging the procedure.

For formal procurement procedures tenders shall be submitted in sealed envelopes on a certain date and time as specified in the Invitation to Tender. The mechanism for registering the exact date and time of receipt of tenders should be established. Tenders must be kept confidential until the opening.

The tenders shall be evaluated by a procurement committee which possesses the necessary technical and administrative expertise to perform tender evaluations. The members of the committee shall ensure they have no conflict of interest. For formal procurement procedures a procurement committee shall be established and be made up of an odd number (minimum 3 members). The opening of the tenders may be made by the same committee.

In formal procurement procedures all tenders must be opened at the same time by the procurement committee. Tenders received after the deadline for submission shall not be considered. At the opening of tenders, at least two persons shall be present and minutes of the tender opening procedure indicating who the tenderers are shall be recorded and signed by at least two of those present.

In the evaluation of tenders, consideration may only be given to criteria specified in the Invitation to Tender. The tenders shall be assessed by the procurement committee applying the eligibility/exclusion, selection and award criteria separately. In justified circumstances tenderers can be asked for clarification or to correct clerical errors. In no circumstances may the offers be altered. The tender to be awarded the contract shall be the one that is considered to be the most advantageous when all these criteria have been taken into account, not only the price (best quality and value for money).

The procurement committee prepares a final report on the selection process including its recommendations for the award of contract. The award of contract and the reasons for the award shall be specified in a special procurement decision to be signed by the person responsible for the procurement. Any exceptions and its justifications from the applicable procurement procedure shall be included.

The tenderer who has been awarded the contract shall be informed of this in writing as soon as possible, but not later than the expiry date of the tender validity period.

The tenderers whose tenders have not been accepted shall be informed of this as soon as possible in writing by an award notice. Copies of regret letters to unsuccessful tenders must be kept in file.

Negotiated procedure

In a Negotiated procedure the organisation is inviting at least three optional candidates to submit tenders in which negotiation of contract terms may take place with one or more tenderers. The organisation must make sure that it negotiates the best technical and financial terms on the basis of the specifications and additional documents. On the basis of the offers received the organisation shall negotiate the terms of the contract with the candidates that satisfied the eligibility and selection criteria. The aim of this is to obtain the best terms and price possible however the main selection criteria announced should not be substantially altered.

For contract values above EUR 40 000 the Invitation to Tender shall be forwarded simultaneously (same day) to all the selected candidates to ensure that all candidates are given an equal amount of time to prepare and submit their proposal. The recommended time for submission from the date of the Invitation to Tender is sent is 14 days. Opening of tenders shall be at the same time and documented. A procurement committee shall evaluate the tenders.

However the price shall not exceed market prices. In the exceptional cases listed below in section 6 it is possible to award contracts based upon negotiation with a single candidate for contract values above the threshold for formal procurements procedures. Single bid Negotiated procedure shall be well justified and reasons documented.

Open tender procedure

Service contracts above EUR 300 000 and contracts for goods above EUR 100 000 may only be awarded after advertised procurement. A tender notice (or contract notice) for the Invitation to Tender shall be published in all relevant media especially on the organisation's web page, in international press (compulsory for contracts above EUR 300 000) and/or local press where the project shall be implemented, in professional and other relevant publications. The Tender notice shall contain the number of candidates who will be invited to tender. The number of candidates can be 4-8 and must be sufficient to ensure effective competition. Invitation to Tender including tender documents is to be sent out to candidates from publication of Tender notice to deadline for submissions of tenders. The documents must be sent within 5 calendar days of receiving the request. All suppliers who meet the conditions for participation may participate and submit an application to tender, but only those that are considered to best meet the specified selection criteria and have been invited in writing, may submit a tender. Deadline for receipt of tenders: Local Publication: minimum of 21 calendar days from date of Tender notice. International Publication: minimum of 30 calendar days from date of Tender notice. Tenders sent by the deadline set shall be opened at the same time by an opening committee in public within a reasonable time after deadline for submitting offers, allowing tenders sent by mail to reach the procuring organisation.

Buying centre/buying agent

If the organisation wishes to use a buying centre/buying agent, the contract is preceded by a procurement procedure as per above. The buying centre/buying agent shall use the procurement rules agreed for the organisation.

6. Exceptions in Procurement procedures

In exceptional circumstances there may be cases in which the organisation considers itself obliged to deviate from the rules for Negotiated procedure or Open tender procedure and instead use a Simple procedure. Such deviations shall be justified and documented. The exceptions may apply in the following circumstances:

- (a) Urgent operations for humanitarian aid and rescue operations. This exemption may only be used if Act Church of Sweden has decided that such circumstances exist. Where appropriate, Act Church of Sweden will inform that such a situation exists and the period during which it applies, e.g in the agreement for funding of the humanitarian aid and rescue operation;
- (b) Service contracts to be awarded a public/state-owned company, or a non-profit organisation or company, and the services regard the organisation’s ordinary activities or the purpose is to operate in the social sectors;
- (c) Extension of contracts
 - (i) For additional supplies, works and services not included in the initial contract but which, due to unforeseen circumstances, have become necessary for the performance of the Action, provided that the additional services cannot without considerable technical or economic disadvantage be carried out by another contractor and the aggregate amount of additional supplies, works or services does not exceed 50% of the value of the initial contract;
 - (ii) For extension of the same services included in the originally procured contract, provided that: (a) the advertised Invitation to Tender for the first contract included an option to extend the contract and that the total value including the extension was specified in the first ad, and (b) the extension of the contract value and period does not exceed the contract value and period of the first contract.
- (d) For additional deliveries by the first supplier where the change of supplier would force the organisation to acquire equipment that would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
- (e) Whenever no tenders/offers or no suitable tenders/offers have been submitted in response to an Open or Negotiated procedure after the initial procedure has been completed, whereby the organisation may terminate the procurement and proceed to negotiate with one or more tenderers who participated in the tender, provided that the original terms of the contract are not substantially altered;
- (f) Where a contract may only be awarded to one specific supplier for technical reasons or other reasons that can be justified by the possession of exclusive rights;
- (g) When it is required due to the characteristics of the good in order to make the delivery, such as when it is required that the supplier holds a patent or license to use the patent;
- (h) When a new contract must be entered into as a result of an early termination of a prior contract. Such a decision must be justified by the organisation showing the previous provider's non-performance or early termination occurred because of other reasons, like those mentioned in section 4. Exclusion of participation in procurement;
- (i) For particularly advantageous contractual terms (e.g. from supplier winding up business or from the receivers or liquidators of a bankruptcy, an arrangement with creditors etc.);
- (j) For contracts for goods quoted and purchased on a commodity exchange.

The decision to use the Negotiated procedure with only one tenderer in these special cases shall be based on strong and convincing justifications. These justifications shall be documented in the procurement decision and filed in the procurement file.

7. Documentation, archiving and follow-up

All documents relevant to the procurement shall be stored by the organisation in procurement files, and archived for seven (7) years from the date the final report is submitted to Act Church of Sweden. Relevant documentation depends on the procurement procedure and includes technical specification/terms of reference, Invitation to Tender, tender notice if any, quotations or tenders, minutes of opening of tenders, minutes of evaluation of tenders, decision and its reasoned justification, regret letters/Award notices to unsuccessful tenders, and the signed contract. It also includes records of the reasoning in the evaluation and the decisions on which deviations are based as provided for in section 6. It is essential that the steps taken and their reasons are well documented and kept on file in case the process is later audited or reviewed or some dispute arises on the procurement procedures followed.

Act Church of Sweden's following up of the organisation and its activities, includes scrutinising procurements financed by grants from Act Church of Sweden. Act Church of Sweden is entitled to access all documents concerning any such procurement activity. Consequently, procurements must be systematic and well documented.

8. Procurement principles - definitions and explanations

Best quality and value for money – The award of contracts shall always conform to the principle of best quality and value for money. The principle of best quality and value for money aims at ensuring efficiency, effectiveness and economy in procurement and is an award criterion which ensures that the optimum quotation/proposal is awarded the contract. The optimum quotation/proposal fulfils the defined needs and the objective of the action with requirements to the following four indicators: satisfactory quality of the supplies/services/works; timely delivery or completion; price corresponding to market prices or lower; and with considerations to human, social and labour rights and the environment.

Competition – Competitive opportunities that exist shall be utilised. The principle of competition is fulfilled with fair and transparent procurement procedures. The number of candidates invited shall be sufficient to ensure genuine competition in the given circumstances. The number of candidates to invite to negotiate or tender varies with the procurement procedure and normally be at least 3. If less than 3 candidates respond with offers by the deadline this has no bearing on the validity of the procurement process as long as the organisation ensures that a sufficient number of candidates were invited to provide genuine competition.

Equal treatment and non-discrimination – Participation shall be open on equal terms for natural and legal persons. Tenders and tenderers shall be treated objectively and without irrelevant considerations in order to ensure competition on equal terms. Award of contracts shall be transparent and objective.

Ethical procurement – the organisation, tenderers and candidates, and contractors must observe the highest ethical standards during the procurement and execution of contracts (avoidance of conflict of interest, irregularities and corruption), ensure basic social rights and working conditions including protection against exploitative child labour, and take environmental aspects into consideration.

Good business practice – Purchases are made in accordance with good business practice, i.e. be transparent, predictable and no supplier shall be discriminated against. Good business practice also means that you normally compare the rates of three suppliers with regard to quality, environmental impact and what is ethically acceptable.

Proportionality – Procedures required for procurement increase with the contract value as do the levels of transparency and hence the form of publication required. This means that the complexity of the procedure followed has to be in relation with the size of the contract.

Transparency – Visibility and openness in all transactions, ensuring that all information on procurement procedures, opportunities and processes are clearly defined and made widely known and available. This includes the eligibility and exclusion criteria for tendering, selection criteria and award criteria.