Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Public Procurement 2026

Definitive global law guides offering comparative analysis from top-ranked lawyers

Switzerland: Trends and Developments

Martin Zobl, Florian Roth and Luisa Vatter
Walder Wyss Ltd

Trends and Developments

Contributed by:
Martin Zobl, Florian Roth and Luisa Vatter
Walder Wyss Ltd

Walder Wyss Ltd has more than 300 legal experts and offices in six locations in all language regions, making it one of the most successful and fastest-growing of the Swiss commercial law firms and one of the few with a dedicated team of public procurement specialists. The firm's clients benefit from its renowned specialist knowledge and wealth of experience, which cover all stages and aspects of a procurement project. Walder Wyss is well versed in sector-specific needs and offers customised solutions for infrastructure and construction projects, complex IT projects and procurements in the energy, healthcare and pharmaceutical sectors. The firm's services include court representation, legal advice and legal training with respect to the structuring and implementation of procurement projects and tender offers, as well as assistance in related contractual, intellectual property and competition law issues. The firm's public procurement specialists are members of the Swiss Association for Public Procurement and have initiated the publication of the commentary of the revised Swiss Public Procurement Act.

Authors

Martin Zobl is a partner in, and co-head of, the regulated markets, competition, technology & IP team and head of Walder Wyss' public procurement group. He is an expert in constitutional and administrative law, administrative litigation and government contracts, with a special focus on public procurement, the energy and infrastructure sector, and the healthcare and life sciences sector. He has extensive experience in advising both procuring entities and private companies on all aspects of public procurement projects, and in representing them before administrative bodies and Swiss courts. Martin is a frequent speaker at conferences and the author of many articles on public procurement law, including the new commentary on the revised Swiss Public Procurement Act.

Florian Roth is a managing associate attorney in the regulated markets, competition, technology & IP team specialising in public and administrative law, with a focus on public procurement, environmental and procedural law. He regularly advises both procuring entities and private companies on all aspects of public tender procedures and represents them before administrative bodies and Swiss courts. Florian is the author of a variety of publications on public procurement law, including the new commentary on the revised Swiss Public Procurement Act.

Luisa Vatter is an associate attorney in the regulated markets, competition, technology & IP team, specialising in public and administrative law, with a focus on public procurement as well as the healthcare and life sciences sector. She advises clients in all areas of public and administrative law and regularly represents her clients in complex administrative proceedings before authorities and Swiss courts.

Contributed by: Martin Zobl, Florian Roth and Luisa Vatter, **Walder Wyss Ltd**

Walder Wyss Ltd

Seefeldstrasse 123
P.O. Box
8034 Zurich
Switzerland

Tel: +41 58 658 58 58
Fax: +41 58 658 59 59
Email: reception@walderwyss.com
Web: www.walderwyss.com/en

Introduction

On 1 January 2021, the revised Federal Act on Public Procurement (PPA), regulating government contracts at the federal level, entered into force. In parallel, all 26 Swiss cantons (ie, states) are expected to join the revised Intercantonal Convention on Public Procurement (ICPP), which applies to procurements at the sub-federal level. The revision of laws paved the way for the ratification and implementation of the Revised WTO Agreement on Government Procurement (GPA 2012) and for the harmonisation of the yet heterogeneous Swiss public procurement landscape. In addition, the new laws strengthen competition among suppliers, reduce the complexity of the Swiss procurement regime and allow for new procedural instruments, including electronic auctions and competitive dialogue.

The next section provides an overview of the key aspects of the revised law and their implications for procuring entities and suppliers. The section "Important Decisions and Developments" will discuss recent landmark cases that will continue to shape Swiss public procurement practice under the revised law.

The Revised Swiss Procurement Law

The current Swiss procurement landscape

The Swiss procurement regime is divided into a federal and a sub-federal level. Since 1 January 2021, contracts of federal procuring entities have been governed by the PPA. The PPA implements the GPA 2012 as well as Switzerland's obligations arising from the Bilateral Agreement with the European Union on Public Procurement of 1999 (BilatAgr). In contrast, the legal situation on the sub-federal (ie, cantonal (state), district and municipal) level is more complex as it is still in a transition phase.

Since 1994, procurements of cantonal and municipal entities have been governed by the Intercantonal Convention on Public Procurement and, in addition, by individual cantonal procurement laws. On 15 November 2019, the cantons approved the revised Convention on Public Procurement (ICPP). While the former convention had the character of a framework convention leaving the cantons a lot of leeway for individual regulations, the revised ICPP is not only more detailed but also largely assimilated to the PPA. This allows for harmonisation among the (previously heterogeneous) cantonal procurement regimes on one side and between the federal and the cantonal level on the other side. This harmonisation is intended to reduce costs, facilitate market entry for domestic and foreign suppliers and thus enhance competition.

All cantons are expected to join the ICPP over the coming years. They do so on an individual basis and in accordance with their cantonal ratification processes. With the first two cantons joining the ICPP (Aargau and Appenzell-Innerrhoden), the ICPP officially entered into force on 1 July 2021. As of publication of this guide (9 April 2026), a total of 21 cantons (out of 26) have ratified the ICPP. An additional three cantons have initiated the ratification process. One canton (Berne) has not become a party to the ICPP but applies the ICPP as cantonal law. In cantons joining the ICPP, the previous cantonal legislation will become largely obsolete. In contrast, public procurements of

cantons which are not yet members of the ICPP are still subject to the previous ICPP and the cantonal legislation. This transitory phase leads to a complex situation where the previous ICPP (plus individual cantonal legislation) will co-exist, temporarily, with the ICPP. For this reason, it is important for suppliers to determine the status of the cantonal ratification process and the applicable law before participating in a tendering process.

Revision

Scope of application: procuring entities

The GPA 2012 applies to central entities of the federal government, to cantonal entities, and to certain public and private entities operating in the business sectors of water supply, electric power supply, public transport, air traffic and inland waterway transport (GPA 2012 Appendix I Annexes 1–3). By virtue of Article 2 et seq BilatAgr, the application of the GPA is extended to:

- authorities and public entities of the districts (*Bezirke*) and municipalities;
- authorities and public enterprises engaged in the railway, telecommunications and energy supply sectors; and
- private entities carrying out public service in the fields of water supply, electric power supply, local rapid transport systems and supply of air or waterway traffic enterprises.

The scope of application of the PPA is aligned with Switzerland's international obligations under the GPA 2012 and the BilatAgr as mentioned above. In contrast to the scope of the former Public Procurement Act, however, the scope of the PPA comprises all authorities and public entities of the central and decentralised federal government by dynamic reference (Article 4 paragraph 1 litera a PPA). Thus, the related list of government entities subject to procurement law contained in the Swiss Appendix 1 Annex 1 Section I GPA 2012 is not comprehensive. In addition, the revised law extends to the federal courts, the Federal Prosecutor and the Parliamentary Services.

As regards the sub-federal level, the GPA 2012 and ICCP operate with an abstract definition of procuring entities subject to procurement rules, as is the case under the GPA 1994 and the ICCP. In essence, centralised or decentralised authorities and administrative units at cantonal, district and communal level are covered. This definition includes bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law.

Cantonal procurement may thus even apply to private companies operating in the public sphere (eg, hospitals) if certain criteria are met. In addition, entities active in select business sectors and endowed with special and exclusive rights are also covered by both the PPA and the rICCP irrespective of their legal form or shareholder structure.

Exemption procedure

Certain business sectors in which, according to the judgement of the Swiss Competition Commission, there is an adequate level of competition can be exempt from the scope of public procurement rules. Under the previous procurement law, this exemption mechanism has only been available to those procuring entities covered by the scope of the BilatAgr. Under the revised law, however, the exemption mechanism is extended to the sectoral markets covered by the GPA 2012 (Article 7 PPA/ICCP). If the Federal Council wishes to exempt further business sectors under the PPA/ICCP, it will first need to consult the Competition Commission, the cantons and the industries concerned. To date, exemptions have only been granted to the telecommunication services sector and the standard gauge railway freight transport sector.

Scope of application: transactions subject to procurement rules

While the former Public Procurement Act did not circumscribe the kinds of transactions subject to procurement rules, the PPA sets forth that procurement rules shall be applied to public procurement (*öffentliche Aufträge*) and – explicitly – to the outsourcing of public services to private suppliers as well as to the award of public licences (Article 8 et seq PPA/ICCP).

The term "public procurement" is now defined in the PPA/ICCP in line with court practice as a contract concluded between the procuring entity and the supplier serving the fulfilment of a public task. The contract is characterised by an exchange of performance

and counter-performance whereby the characteristic performance is rendered by the supplier in return for payment.

For suppliers, the inclusion of the outsourcing of public services and the award of public licences in the scope of procurement law bring along new opportunities. The new law makes explicit that, for instance, outsourcing contracts in the fields of waste disposal, maintenance of national roads and collection of fees in accordance with the Radio and Television Act will be subject to public tender.

With the GPA 2012, the positive lists of covered procurement were extended to include various services as well as construction services not previously within scope. The same holds true, for example, for legal services. However, an exception applies to the representation of the federal government or public enterprises by lawyers in court, arbitration or conciliation proceedings, and to related services (Article 10 paragraph 1 litera g PPA).

Special rules for non-treaty procurements

The PPA and ICCP apply to both procurements covered by international treaties (*Staatsvertragsbereich*) and procurements regulated solely by national law (*Nichtstaatsvertragsbereich*) whilst setting forth a set of special rules for the second category. The types of procurement covered by international treaties are listed in Annexes 1–3 of the PPA but only fall under this category if the procurement reaches or exceeds the thresholds set out in Annex 4 to the PPA. Procurement regulated by national law only, as well as the special provisions applying thereto, are set out in Annex 5 to the PPA.

The special rules applying to procurement only regulated by national law involve some facilitations: for instance, the option to conduct a tender invitation procedure (*Einladungsverfahren*, Article 20 PPA/ICCP). Furthermore, foreign suppliers are only admitted to the tender:

- if their country of origin grants reciprocal rights; or
- with the consent of the procuring entity (Article 6 paragraph 2 PPA).

Finally, at the federal level, legal protection is limited (see “Legal protection” below).

General principles and objectives of public procurement

The general principles of public procurement are set out in a separate chapter in the PPA, with only a few changes compared to previous law. The principles of non-discrimination, equal treatment of competitors, transparency and competition remain the pillars of the Swiss procurement law regime.

The few substantive changes follow the direction of the GPA 2012, one of the main objectives of which is to combat corruption. Against this background, procuring entities are now explicitly obliged to take measures against conflicts of interest, unlawful non-compete agreements and corruption (Article 11 litera b PPA). In addition, bidding rounds – ie, pure price negotiations – are henceforth prohibited not only at the cantonal, but also the federal level (Article 11 litera d PPA).

Finally, the violation of corruption provisions may lead to the exclusion of a supplier from future tenders by procuring entities for a maximum duration of five years and to revocation of an award (Article 44, paragraph 1 litera e in conjunction with Article 45 paragraph 1 PPA).

New instruments

Under the revised law, the basic types of tender procedures (open tender, limited tender, tender invitation and direct award) remain unchanged. However, the PPA presents a set of new instruments to make the tender procedure more flexible and to use the advantages of recent technological progress. These instruments will not constitute alternatives to the four above-mentioned procedures, but may rather be embedded therein if deemed appropriate. New instruments include the following.

Electronic auctions

This means an automated evaluation of certain parameters of a tender, namely the price (if the contract is awarded to the lowest price) or other quantifiable components (such as weight, purity, quality), whereby the contract is awarded to the most econom-

ically advantageous offer. Electronic auctions are only available for the procurement of standardised goods and services. The electronic auction is preceded by a (non-electronic) pre-qualification phase during which the suitability of the bidders is verified and an initial evaluation of the bids is made. The actual electronic auction of the tenders that passed pre-qualification follows in a second step (Article 23 PPA/ICCP).

Competitive dialogue

This instrument enables the procuring entity and the tenderers to jointly specify the object of procurement and to identify possible solutions thereto (Article 24 PPA/ICCP). It is available for complex, intellectual and innovative services but must not be abused to conduct pure price negotiations.

Framework contracts

The revised law contains a new legal basis for the conclusion of framework agreements between a supplier and the procuring entity (Article 25 PPA/ICCP). Framework contracts allow the procuring entity to award individual agreements to its framework contract partners during a given period without a new invitation for tender. The most important contract parameters (in particular, price, type and amount of services) must be specified in the framework contract.

If framework agreements are concluded with more than one supplier, the call on services may be made either under the terms set out in the framework contract (without a new invitation to tender) or by means of a call-on-services procedure in which the parties to the framework contract are invited to submit a specific offer (so-called mini-tender).

Electronic tender procedure

The conduct of tender procedures by electronic means is regulated by Article 34 paragraph 2 PPA/ICCP. Tenders may be submitted electronically if this is communicated in the invitation to tender or in the tender documentation.

Legal protection

With the revised Swiss procurement regime, legal protection in procurement procedures is (moderately) extended. At the federal level, suppliers can now appeal against decisions by the procuring entity in procedures concerning tenders for goods or services reaching or exceeding the threshold value applicable to the invitation tender procedure: ie, CHF150,000 for procurement by federal authorities. In relation to tenders for construction services, the threshold value will be CHF2 million (Article 52 paragraph 1 PPA). Cantonal procurements are subject to the same principles although different threshold values apply (Article 52 paragraph 1 ICPP). Prior to the revision, in procedures concerning procurements not reaching the threshold values pursuant to the relevant international treaties, no appeals were possible at the federal level.

Non-treaty procurements

At the federal level, effective legal protection will be restricted for procurements covered by international treaties. In particular, a supplier is not entitled to challenge the tender award itself in court and the procuring entity is allowed to conclude a contract with the supplier immediately after the award has been granted without waiting for it to enter into force (Article 42 paragraph 1 PPA).

Still, suppliers not winning the award are now, under the revised law, able to (i) request that the court declare the challenged award illegal and, (ii) if necessary, obtain damages for the costs incurred in connection with the tender procedure (Article 58 paragraphs 3 and 4 PPA/ICCP). However, non-Swiss suppliers are only admitted to such legal action if their country of origin grants Swiss suppliers reciprocal rights (Article 52 paragraph 2 PPA/Article 52 paragraph 3 ICCP).

Appeal of tender documentation

Article 53 paragraph 2 PPA/rICCP clarifies that a supplier needs to challenge unlawful instructions in the tender documents, the significance of which is apparent along with the invitation to tender. This means that if the supplier fails to bring forward such complaint immediately, the complaint is forfeited. Practically speaking, under the revised law, suppliers are required to study the tender documents thoroughly immediately after publication, address any inconsistencies to the procuring entity without delay and, if necessary, file the complaint with the court within the time limit for appeal.

Time limits

The revision has brought about a harmonisation of the time limits for appeal. A 20-day time limit for appeal is applicable at both the federal and the cantonal level (Article 56 paragraph 1 PPA/ICPP) while the ICPP only provides for a ten-day period. In return, no court holidays apply to complaints under the revised law, regardless of their subject matter (Article 56 paragraph 2 PPA/ICPP). This is an important contribution to the acceleration of tender procedures.

Important Decisions and Developments

Scope of application – public–private partnerships (PPP)

In its decision 2C_1009/2021 of 10 November 2023, the Swiss Federal Supreme Court questioned a lower court's decision that a privately led infrastructure project carried out within a public–private partnership (PPP) did not fall within the scope of Swiss public procurement law despite financial contributions and a subsequent acquisition of the infrastructure by the public authority. The Court did not, however, render a decision on the substance of the matter since it dismissed the case on formal grounds.

A private real estate company planned the construction of a football stadium along with surrounding residential and commercial developments on its property, with an estimated total cost of CHF400 million. The stadium's estimated cost comprised approximately CHF60 million and was to be sold to a municipal stadium company for a fixed price of CHF25 million, with part of the financing coming from public contributions by local authorities and the canton. The developer intended to cover the remaining costs through profits from associated real estate developments enabled by zoning changes. An architectural firm that had not been involved in the project demanded that the planning and construction works be subjected to a public tender. In its appeal, the firm argued that the stadium project was subsidised by public funds and therefore subject to procurement rules.

The cantonal court of appeals ruled that Swiss procurement law applies to projects financed predominantly by public funds, but that the threshold was not met in this case. According to the court, when examined from an overall economic perspective, the project's majority financing came from private investment rather than public contributions. In addition, the zoning change allowing additional development constituted arm's length compensation for the reduced purchase price of the stadium rather than a subsidy and therefore did not qualify as "public funds" for the purposes of procurement law. Upon appeal, the Federal Supreme Court called the cantonal court's finding that an exemption from public procurement law applied "questionable". The Court considered that the private real estate company may have been performing a procurement on behalf of the public authority by constructing a stadium later to be bought by the commune. However, the Court did not render a decision on the substance of the matter but dismissed the appeal on formal grounds.

Legal protection – procurement contracts concluded in violation of "standstill" period

In its ruling 2D_14/2024 of 19 May 2025, the Swiss Federal Supreme Court clarified the legal consequences of a procurement contract concluded in violation of the statutory "standstill" period. Contracting authorities must put off the conclusion of contracts until it is certain that no appeal against the award has been filed. This period includes a couple of days following the end of the deadline for appeals due to the time needed for postal delivery of court orders. The Court held that if a contracting authority concludes a contract prematurely, the affected bidder's remedies shall not be limited to a formal recognition by court that the award breached the law and/or an award of damages (so-called secondary remedies). Instead, appeal bodies must examine whether so-called primary remedies are adequate, which include a termination or modification of the concluded contract, thereby strengthening the effectiveness of judicial review in Swiss procurement law.

In the case at hand, a school municipality conducted an open tender for construction works. One bidder's offer was excluded due to late submission. The contract was subsequently awarded to another bidder and signed shortly after the expiry of the appeal period (but before the point in time in which the contracting authority could reasonably expect to receive the appeal by mail). The excluded bidder challenged the exclusion and the award. The cantonal administra-

tive court acknowledged that the contract had been concluded prematurely but only awarded damages as remedy. The bidder appealed to the Federal Supreme Court.

The Federal Supreme Court granted the appeal and held that limiting judicial review to secondary remedies in cases of prematurely concluded contracts would undermine effective legal protection. Therefore, appeal bodies must consider declaring the contract void in exceptional circumstances or ordering the contracting authority to terminate or modify the contract where this remains feasible and proportionate. The Court emphasised that a premature conclusion does not automatically render the contract invalid under civil law, but it may justify judicial intervention to restore compliance with procurement law. The case was remitted to the cantonal court for further examination.

See also ruling of the Swiss Federal Administrative Court B-6817/2024 of 28 November 2025 (not final; appealed at the Federal Supreme Court) regarding the proportionality of unwinding an already fulfilled contract that had been concluded in violation of the "standstill" period.

Weighting of the award criterion "price" – clarification of case law in complex procurements

In its decision B-7603/2024 of 7 July 2025, the Swiss Federal Administrative Court clarified the maximum weighting of the award criterion "price" (as opposed to quality) in complex procurements under the PPA. The court held that weighting the price at 60% in a technically demanding, large-scale infrastructure procurement was still permissible; however, it constituted the upper limit. The ruling thus refines the existing case law on the weighting of award criteria by confirming that complexity of a procurement project does not imply a mandatory low weighting of the price.

In the case at hand, Swiss Federal Railways (SBB), a sectoral contracting authority within the meaning of Article 4 (2)(f) PPA, opened a selective public tender procedure for the development and replacement of up to 580 interlocking systems. The award criteria comprised price including life cycle costs (weighted at 60%) and quality (40%). Price was assessed using a linear model with a predefined price range of 45%, meaning that offers exceeding the lowest bid by more than 45% would receive no points. The appellant argued that the procurement project was complex and the safety requirements demanding and that, in such circumstances, weighting of the price should not exceed 20%.

The Federal Administrative Court confirmed its practice that contracting authorities enjoy discretion in determining and weighting award criteria (see Article 56 (3) PPA), subject to judicial review only for a breach of the law. According to established federal case law, price may be given more weight in procurement projects for simple goods and services. By contrast, in complex projects, the price must be attributed at least 20%. While acknowledging the technical complexity of the procurement project at hand, the Court identified decisive mitigating factors which allowed less weight to be attributed to the price criterion:

- Development costs were largely compensated on a lump-sum basis (up to CHF15 million), reducing competition in the intellectual development phase.
- Following the development phase, the procured services mainly concerned production, integration and life cycle services.
- Strict regulatory and detailed technical requirements limited the scope for substantial qualitative differentiation in the quality of bidders' offers.

Against this background and considering the special circumstances of the case, the Court concluded that a 60% weighting of the price criterion fell within the contracting authority's discretion and did not violate Articles 29 or 2 PPA.

Invitation procedure – tender documents are subject to independent appeal

In its decision 2C_657/2023 of 4 September 2025, the Swiss Federal Supreme Court clarified that tender documents issued in an invitation procedure are not subject to independent appeal. Objections against the content of such documents may only be raised together with a subsequent decision which is subject to appeal per Article 53 (1) ICCP, such as the award. The ruling provides important clarification on legal protection in invitation procedures.

In an invitation procedure conducted by a municipality for winter maintenance services, the tender documents weighed the price award criterion at 30% and quality at 70%. Following the award, the unsuccessful tenderer challenged, inter alia, the weighting of the price criterion. The cantonal court of appeals held that the complaint was inadmissible because it was filed late as the weighting should have been challenged immediately upon receipt of the invitation and tender documents.

The Federal Supreme Court overturned this ruling and held that Article 53 (1) ICCP contains an exhaustive list of decisions subject to appeal and that the tender documents are not listed therein. According to the Court, an invitation procedure does not involve a "publication of the tender" within the meaning of Article 53 (1)(a) ICCP. Therefore, Article 53 (2) ICCP, which requires bidders to appeal against the tender documents immediately (ie, not only against the subsequent award), is inapplicable. The Court remitted the case to the cantonal court for further examination.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Rob.Thomson@chambers.com