

Michel Beyet
EIC Grenoble
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THE BILATERAL AGREEMENTS BETWEEN SWITZERLAND AND THE EU PUBLIC PROCUREMENT

Introduction

Public purchase in Switzerland amount to approximately 36 billion CHF per year (10% of the GDP).

The progressive opening of these contracts to international suppliers only dates back to 1994 when Switzerland signed the Agreement on public Procurement Markets (APM) in the framework of the WTO.

The enforcement of the bilateral agreement between Switzerland and the EU on June 1st,2002 will reinforce the liberalisation process for EU suppliers and contractors

International Legal Backgrounds

The Agreement on Public procurement Markets(APM) of the WTO

- *Government procurement Agreement (GPA) concluded in Marrakech on April 15, 1994 under within the framework of the WTO, and which entered in force on 1st January 1996*

The World Trade Organisation (WTO) agreement on public procurement markets (APM) has been in force since January 1st, 1996. It subjects the federal and cantonal authorities as well as public companies in the water, public transport and energy sectors to WTO rules on invitations to tender and the awarding of contracts for goods and services, as well as contracts for construction projects, insofar the contracts are above certain thresholds.

The WTO rules are based on the following principles:

- Equality of treatment for all who submit bids (non discrimination)
- Transparency of procedures
- Right of legal appeal against decisions concerning offers and the award of contracts

The EU-Switzerland agreement

- *Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement. OJ L 114 dated 30/4/2002.*

The WTO agreement serves as the basis for the agreement between the EU and Switzerland. The latter extends the field of application beyond that of the WTO model. This extension concern the city councils and private companies holding a public service delegation.

The EU-Switzerland agreement also extend the WTO agreement to the following sectors which were not included in the WTO agreement:

- Telecommunication and railway transport
- Transportation on ski slopes

Swiss legal backgrounds

- federal Law on government procurement of December 16, 1994 (SR 172.056.1)
- Federal Ordinance on government procurement of December 11, 1995 (SR 172.056.11)
- Ordinance of the Federal Economic >Department of November 21, 1997 on the adjustment of thresholds value in public procurement

The EU-Swiss bilateral agreements: concrete outcomes

- Suppliers from the European Union may now bid for Swiss tenders above the thresholds mentioned in the EU-Swiss agreements
- Swiss suppliers may bid for tenders above the thresholds mentioned in the Eu-Swiss agreements issued by EU authorities

Comparisons of the Application fields for the WTO agreement and the EU-Switzerland agreement

Awarding authorities	Type of contracts	WTO agreement Thresholds (CHF)	EU –Swiss agreement Thresholds (CHF)
Federal Government	Goods and services	248 950	Same as WTO
	Construction	9 575 000	Same as WTO
Cantons	Goods and services	383 000	Same as WTO
	Construction	9 575 000	Same as WTO
Local authorities	Goods and services	Not covered	383 000
	construction	Not covered	9 575 000
State controlled public project contractors and companies at all level in the water, energy and transport sector	Goods and services	766 000	Same as WTO
	Construction	9 575 000	Same as WTO
Private operators in the field of water, energy, transport, including ski transport	Goods and services	None	766 000
	Construction	none	9 575 000
Public and private operators in the filed of railway transport and energy (including gas energy)	Goods and services		650 000
	Construction		8000 000
Public and private operators in the field of telecommunication	Goods and services		960 000
	Construction		8000 000

The bidding procedures in Switzerland

- open bidding: public Tendering of the contract in the Swiss official Commercial Gazette (Schweizerische Handelsamtsblatt/Feuille Officielle Suisse du Commerce). All bidders are invited to submit
- Selective bidding: Public tendering of the Contract in the Swiss Official Commercial Gazette . All bidders may submit a request to participate. The procurement office determine who shall bid, upon their suitability
- Bidding by invitation: At least 3 bidders will be invited to submit a written offer without public tendering
- Discretionary procedure: The procurement office awards the contract directly and without public tendering to a supplier

Remedies

As far as a tender is subject to the WTO and/or the EU-Switzerland agreement, a bidder may submit his case to an independent body if he feels that his bid was handled unfairly. At federal level, this body is a federal remedy Commission for public procurement based in Lausanne. At cantonal or local level, the challenge body will be a national court or another impartial, independent review body which has no interest in outcome, and which is subject to judicial review.

Sources of information about the Swiss tenders

According to various contacts with executives from OPOCE and the Swiss Official gazette, we can summarise the following: the Swiss tenders above the WTO thresholds are published in TED (they are transmitted by the Swiss official Journal to OPOCE).

*The situation is less clear for the tenders above the thresholds defined by the EU Switzerland agreements –when different from the one defined in the framework of the WTO. According to contacts in the Swiss official Journals, Swiss authorities issuing tenders above the EU-Swiss thresholds only have the obligation to publish the tender **online** “somewhere”. This means that it may be published either in the Swiss official journal (available online) or in a cantonal Journal – if available online.*

The problem is that there is no single source for such tenders. The SIMAP.CH project (see address below) has been set up in order to solve that problem, but it is not yet fully operational since it is yet covering only 4 cantons, with a progressive extension planned in the coming months

Swiss official Gazette of Commerce (SOGC)

www.sogc.ch

also available in

- French: www.fosc.ch
- German: www.shab.ch
- Italian: www.fusc.ch

This database is gathering a summary of the tenders which are submitted to the rules of the WTO agreement and/or the EU-Swiss agreement

SIMPAP.CH

www.simap.ch

This pilot project aims at gathering on a single site the tenders issued by the 26 cantons. It was launched in November 2002. For the moment (December 2002)only the tenders from 4 cantons (Vaud, Genève, Fribourg and Tessin) are available on this site

TED: <http://ted.eur-op.eu.int/>

Conclusions and general comments

Despite the liberalisation and opening of the Swiss procurement linked to the WTO agreement and the EU-Swiss bilateral agreement, some improvements are still needed before a complete transparency is achieved. In particular, we still face a lack of harmonisation of the procedures between the various cantons, as well as a difficult access to all the cantonal tenders through a single source. The development of the new initiative smiap.ch should be followed.