

The Swedish Competition Authority's supervision over public procurement

1 General information about our supervisory role

The Swedish Competition Authority is the supervisory authority for the public procurement regulations. Our task is to work for efficient competition and effective public procurement for the benefit of the general public and economic operators on the market. We mainly do this by exercising supervision over public procurement. Our supervisory activities include reviewing, investigating and adopting decisions in regard to whether contracting authorities or entities (authorities) have followed the procurement regulations. However, we do not have a mandate to decide that a procurement should be recommenced or corrected, or to declare an agreement ineffective. Such decisions can only be made by a court.

In our supervision, we give priority to those cases where we think that our supervision will have the desired effect. Among such effect are that a larger circle of contracting authorities and economic operators will benefit from our investigation of the legal matter, that the contracting authority that we are investigating changes the behaviour that led to an infringement of the legislation or that our actions in some other way have a preventive effect.

Against this background, we select which cases to investigate on the basis of a prioritisation policy where we take the following factors into consideration:

- Whether there is a deterrence effect and/or need for guidance.
- Shortcomings in the conduct of the contracting authority.
- How great the public interest is.
- Whether the Swedish Competition Authority is best placed to intervene.
- The extent of resources needed in relation to the ability to achieve the desired result.

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2 Plan for supervision

In order to conduct effective supervision, we need to be able to deal with both valuable tip-offs and ideas that we receive continuously, as well as reviewing areas, legal issues and authorities that we have identified on the basis of broader data in terms of time and scope. Therefore, our supervisory activities are divided into two parts – one that we call event-driven supervision and one that we refer to as planned supervision.

2.1 Event-driven supervision

The event-driven supervision concerns cases that are initiated after we have received a tip-off or discovered information that gives us reason to suspect that an infringement has taken place. This type of supervision is performed reactively on the basis of current information.

2.2 Planned supervision

In contrast to the event-driven supervision we act proactively in our planned supervision. In this type of supervision, we have identified legal issues in advance, as well as areas and authorities that we are to review.

The planned supervision is preceded by an annual analysis.

2.2.1 Annual analysis of the planned supervision

In order to identify which areas we need to review in particular in our planned supervision, we use a number of parameters. We analyse the tip-offs we have received, statistics from our own media monitoring tool as well as information from relevant operators – both national and international. In this way, we obtain a basis for what legal issues need to be clarified and what areas that are in particular need of review.

During the course of the analysis we also gather information on which authorities may be relevant for a more in-depth procurement review. This also involves the use of several parameters in order for us to be able to decide which authorities may become subject of this type of review (read more about our in-depth procurement review below).

With the support of our prioritisation policy, we then make an assessment of the information that has been obtained.

2.3 Different types of cases

Our supervision normally consists of written and oral communication with the authority being investigated in order to find out what has happened in the case in question. When considered necessary, we also carry out other investigatory measures, such as having contacts with stakeholders, arranging meetings or making field visits.

2.3.1 Investigation of a specific public procurement

In our supervision we select specific public procurements that we review. The investigation of a specific procurement mainly occurs in the event-driven supervision, but may also take place in the planned supervision.

2.3.2 Investigation of several procurements regarding a specific area or legal issue

From the annual analysis we can obtain information on legal issues that need to be clarified or areas that are in particular need of review. In these cases, we generally examine several public procurements in order to take a broader grip on the legal issue or problem at hand.

A previous example of this is the project on framework agreements (only available in Swedish).

2.3.3 In-depth procurement review

From the annual analysis we can also obtain information on which contracting authorities that may be subject to an in-depth procurement review. In the in-depth procurement reviews we take a broader grip on a contracting authority and its procurement activities.

2.4 Our methods for acquiring information for supervisory cases

We use different methods to obtain input for the cases that are subject to our supervision.

2.4.1 Tip-offs

We receive tip-offs by phone, e-mail, from personal meetings and through our anonymous web-form. The tip-offs vary in terms of quality and quantity of relevant information. Tip-offs that are not investigated are saved and used in our annual analysis.

2.4.2 General media monitoring

We monitor written media that can be of interest in our supervision. Examples of this could be alleged illegal direct awards of contract or other infringements of the public procurement regulations.

2.4.3 Notice for voluntary ex ante transparency

We supervise notices for voluntary ex ante transparency, i.e. when a contracting authority publishes its intent to make a direct award of a contract. Above all it is the justification for the direct award that we review, but we may also review the contents of the notices.

2.4.4 Special search in the media, of tip-offs and/or databases

A special search is when we actively search for articles or other written matter concerning predetermined areas, for example with the use of special search strings. It could, for example, be public procurements within one specific area, a

special procurement-related legal error or specific authorities. We may also give special attention to tip-offs within a particular area that we have chosen to investigate. We may also obtain the procuring documents from available channels in order to see whether they fulfil the procurement legislation in a certain respect.

2.4.5 Trend searching

Trend searching is a method by which we, in the media or via other relevant channels, ask to be given material by the general public for concrete cases. It could be that we request authorities, suppliers or other stakeholders with experience of public procurement in a certain area to provide us with information on positive and negative experiences within the area.

2.4.6 Matching of purchase data

This is a method that is used for in-depth procurement review of authorities' purchasing activities. The method means that we require book-keeping material and/or other relevant documentation for a certain period of time in order to check whether purchases have been done correctly. We do this, among other ways, by matching purchases against published contract notices, call-offs from framework agreements, etc. Purchases that cannot be connected to a published contract notice or a framework agreement are further investigated, in order to find out whether they constitute a breach of the procurement regulations or whether the contract was excluded from the scope of the regulations. The review may also comprise other issues, for example whether a contracting authority has fulfilled the obligation to document contracts that have been awarded directly (without the publication of a contract notice).

2.4.7 Gathering of documentation in accordance with the legal obligation to document

Contracting authorities have a legal obligation to document direct awards of contract with a value above SEK 100 000. We collect the documentation and process the material to find out whether an authority has made purchases of goods and services of the same type above the national limit for direct procurement.

2.5 Choice of supervisory tool

Our supervision can result in an application for a procurement fine, a supervisory decision or a report that is accompanied by supervisory decisions. Our in-depth procurement reviews result in a review report.

2.5.1 Application for procurement fines

We focus especially on illegal direct awards of contract and those cases where we may bring proceedings at a general administrative court, requesting that a contracting authority be ordered to pay a procurement fine.

In cases that we have chosen to prioritise we can apply for a procurement fine on our own initiative. However, we must apply for a procurement fine, a mandatory

application, in the case of a breach of a standstill period or an extended standstill period. This applies even if a court, in an appeal concerning the effectiveness of a contract, has ruled that the contract may stand on reasons relating to the public interest.

Cases that result in a procurement fine usually also have a preventive effect in general.

2.5.2 Supervisory decisions

Our supervision may also result in a supervisory decision. In a supervisory decision we can criticise contracting authorities and make them aware of the obligations they have to apply the relevant procurement legislation. The decisions also provide concrete guidance for other contracting authorities.

2.5.3 Reports or review reports

In our reports, in which we have studied specific areas, we give concrete form to and discuss, for example, problems that we have identified. The reports also contain related supervisory decisions (which concern specific procurements) that have a bearing on the same problems.

Our in-depth procurement reviews lead to a review report. The reports are directed at the contracting authority that has been under review. Usually, the reports contain our overall conclusions, the supervisory decisions and references to any applications for procurement fines that have been a part of the review.

2.6 Report on our supervision

We will publish an annual report on our supervision of the procurement regulations. In this report it will be possible to read which areas we have studied in more detail and why. In the report the results of our evaluations of the effects of

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our supervision will also be published.