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# Public Procurement in the View of Small and Medium Sized Enterprises in EU and Sweden

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May 27, 2002

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## FOREWORD

After a few years working with sales I encountered sales through procurement. I had previously been trained like a traditional sales person. Always to be on the look out for potential needs and constantly looking for leads that could turn in to a prospect, a prospect that could lead to a definitive piece of business. For me, a sale was to detect a need and desire for the customer, invent a solution or lure with an attractive contract. Convince the customer that my product was what the customer was looking for and the customer would be the happiest with the product that I sold.

Therefore, I thought that selling through procurement was a backward process. I had to wait for the buyer to publish a document that told me what they wanted to buy. I could no longer knock on doors and make cold calls. It was not appropriate to make appointments to demonstrate or showcase the products that I represented. In addition, I could not tell the customer what they originally were looking for was not suitable for their needs. Finally there was no room for negotiation, the process that most sales people think is the most exciting part of their job. I thought that public procurement did not have anything to do with my ability to sell. Instead, public procurement was an administrative exercise to fulfil a request list from the buyer.

As I got used to public procurement I realized that there were some advantages to this particular sales process. It was clear from the beginning what the customer wanted, and I did not have to spend time on creating solutions that was not asked for. The conditions were specified and there were no surprises when it was time to sign the contract. As I continued to work with public procurement, I realized that public procurement could offer new opportunities and additional revenues for companies that are not aware of the public procurement market. The products and services that are requested can vary from construction of new roads to fresh vegetables. The variety of products and services that is asked for through public procurement is so gigantic that the majority of all business could participate and place tenders.

As it became part of my job duties to search for public tenders, I started to unpretentious look for whom the awarding contracts were given to. I discovered it seems like it was the same companies that received the contracts. These companies were often well known national companies. I assessed if price was an issue, smaller companies could probably offer better prices. Often smaller companies have a less overhead expenses and can therefore compete with the companies that have economy of scale when it comes to the price. However, I seldom saw small and local companies as the winner of the public procurement contracts.

## Acknowledgement

I would like to thank my two advisors Henrik Norinder and Ola Mattisson that has worked with me during this assignment. They have help me to put on print the interest of my research and made me understand how to come to a result. I am especially grateful for how the advice was given. When I encountered difficulties, the advice from you made me look at the problem and come to terms on how to solve the issues. Thank you for not giving me the answers but instead spending time and letting me come to the insight of what needed to be changed. This type of advice takes a lot longer time to give and requires more patience and understanding from the advisors. The content of this work is based on my findings and the consequence discussion is solely based on my perception of the quandary. However, it is your support and input that gave me the courage to persist in the area. You have added value to the task of writing a thesis with your advice and suggestions. I finish this work with more knowledge thanks to you.

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## 1 Introduction

### 1.1 Presentation of Interest

Public procurement is acquisition of goods and service for public consumption. According to conventional economic wisdom, deregulation and liberalization of private and public enterprises will enhance competition, which will lead to an expansion of production, trade, and general welfare.<sup>1</sup> As more markets are deregulated and more services are being privatized, the public procurement market is expanding and more professionals will come in contact with public procurement either as a sales person, buyers, administrator or as a user. Even as a private person and as a taxpayer the public procurement will influence us. We are reminded through the media that it is our money that is being spent, and that we have the right to demand that our tax money is used in the best way and that public purchasers will search for the best values for the price. At the same time we are reminded that the purchasing procedure should be according to the established rules and regulations. The regulations are harmonized in the European Union through directives and therefore the area of the public procurement is of interest for many EU-citizens.

Public procurement is part of the creation of the single market in the European Union. Besides, public procurement is an important category of European economic activity since the value of public purchasing amounted to 11% of the GDP in the member countries in the Europe Union.<sup>2</sup> Already in 1996 was it known that larger companies were experienced in tendering for public contracts but the number of contracts won by small and medium sized enterprises had remained small.<sup>3</sup> It was established that progress had been made in the public procurement area, but there were still areas that needed improvement. It was determined that SME (small and medium sized enterprises)<sup>4</sup> should win a larger share of public contracts given their importance in the European economy. The basic objectives of an internal market in procurement could not be met unless SME can also secure genuine access to Europe's

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<sup>1</sup> Weiss, Friedl, *Public Procurement in European Community Law*, K 1993 p. 4

<sup>2</sup> Ibid. p. 97

<sup>3</sup> 583 COM(96)583 Green Paper, Public procurement in the European Union: Exploring the Way Forward

<sup>4</sup> The EU-Commission defines SME – Small and Medium Enterprises as a company that employs less than 250 employees.



markets.<sup>5</sup> In 2000, the importance of SME was recognized at the European Council meeting in Santa Maria da Feira, Portugal. The issue of employment, economic reforms, and social cohesion was discussed and the President of the European Parliament, Mrs Nicole Fontaine, stated the following.

*“Small enterprises are the backbone of the European economy. They are a key source of jobs and a breeding ground for business ideas. Europe’s efforts to usher in the new economy will succeed only if small business is brought to the top of the agenda. Small enterprises are the most sensitive of all to changes in the business environment. They are the first to suffer if weighed down with excessive bureaucracy. And they are the first to flourish from initiatives to cut red tape and reward success. At Lisbon we set the goal for the European Union to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth, more and better jobs and greater social cohesion.*

*Small enterprises must be considered as a main driver for innovation, employment as well as social and local integration in Europe. The best possible environment for small business and entrepreneurship needs therefore to be created”<sup>6</sup>*

This statement indicates that it is important that SME have a propitious market to work on. The public procurement can be an important part of that and one of the important factors in creating economic growth and promoting prosperity is to promote the value for the SME.

In a publication, Trade Minister Leif Pagrotsky explains that it is important that as many companies as possible should be active on the public procurement market to ensure that the competition is working properly. That a building block for economic growth and employment is sound finances and low inflation. Efficient and firm public procurement processes is an effective part of the effort against high inflation and encourage healthy finances. A competitive market is a warranty for product development and innovation, which is necessary to withstand competition internationally.<sup>7</sup> The minister of trade encourages more companies to take part of the public procurement market and presumably that means that SME should increase their participation. A representative for the Swedish Trade Council says that SME in

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<sup>5</sup> COM (96) 583 Green Paper, Public procurement in the European Union: Exploring the Way Forward

<sup>6</sup> www.europarl.eu.int Santa Maria de Ferira, European Council 19 and 20 June 2000, Conclusions of the presidency.

<sup>7</sup> National Board of Trade in the publication Gränslösa @ffärer 2000, p. 3.

Sweden do not participate as much as the companies in the neighboring countries Finland and Denmark.<sup>8</sup> Another person that actively work with public procurement at the educational level states that SME tend to place less public procurement outside their local market and even less public procurement tenders across borders.<sup>9</sup> When considered there are 18 million SME within the European Union,<sup>10</sup> the impact of the absence in the public procurement of SME ought to be apparent. There is a trend among the leaders in the industrial countries that the significance of smaller business to create jobs and growth is more important today than previously.<sup>11</sup> Furthermore, politicians and decision-makers see new and small business as a general building block in any strategy for coping with the problems of a stagnating economy.<sup>12</sup> Therefore it is understandable that there are forces that want to increase the participation of SME on the public procurement market.

## 1.2 Characteristics for the Small and Medium Sized Enterprises

The European Commission determines SME as a business with less than 250 employees. A more traditional descriptive picture of SME is where the owner starts the business on a small scale and gradually grows and develops into new areas. The business is concentrated locally or regionally, the share of the total market is relative minor, and the company is quite dependent on one or a few customers. The owner is often the manager and the distance between him and the employees is short. The manager has a strong personal influence on the business activities and senses a personal unity for the engagement of the operation.<sup>13</sup> In the small company the owner or general manager is the key figure. It is this persons experience and competence that determine if the company will succeed. Because of these reasons it is difficult to analytically separate the owner/general manager from the company.<sup>14</sup>

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<sup>8</sup> Interview with Eva Häger Swedish Trade Council

<sup>9</sup> Leif Norberg EuroAssist Consult, Educator for Swedish Trade

<sup>10</sup> Euro stat Statistics in Focus, *SME Statistics*, Vol. 16/1999

<sup>11</sup> Davidsson, Per, Delmar, Frédéric, Wiklund, Johan, *Tillväxtföretagen i Sverige*, Studieförbundet Näringsliv och Samhälle, 2001, p. 68

<sup>12</sup> Johansson, & Landström, *Images of Entrepreneurship and Small Business*, Student litteratur, 1999, p. 7

<sup>13</sup> Landström, Hans rapport Småföretagarens försörjning med riskkapital, 1988, p. 7

<sup>14</sup> Johannisson, Bengt & Lindmark, Leif *Företag, Företagare, Företagsamhet*, Studentlitteratur 1996, p. 25

The way SME find both capital and potential customer can differ from the large and established companies. Some handbooks describe traditional ways for the new entrepreneur to get started. Examples to find and influence the market for sales and marketing can be through direct mail and telemarketing. Other advices are to participate in exhibitions or produce commercials for radio and TV.<sup>15</sup> Handbooks sound encouraging when it comes to finances. Present your well-prepared business idea and chances are that you will get a loan.<sup>16</sup> However, the businessperson's connection with the community and the network within the branch can instead be utilized for starting relationship with loan givers, credit institutions, and potential customers. When the SME gets started, unconventional methods can be used to find and close deals. A handshake as closure and a promise of a prolonged grace period for payment can be one solution. When building the business, the reputation of quality is not cunningly planned.

The reputation of the business is closely connected with the owner/managers trustworthiness and the owner/manager's personal traits and characteristics can be the factor of importance for the customer.<sup>17</sup> Through history there have been entrepreneurs that have expanded over whole continents and started entirely new industries. Characteristics as energy and drive are not the only distinct qualifications needed for success. Obstacles cannot discourage the entrepreneur. Instead the entrepreneur uses the knowledge and experience to his advantage to reallocate resources for growth and development. Many of the best known and most successful companies in Sweden for example, IKEA, Tetra Pak and Electrolux were founded and developed based on an individual's innovation.<sup>18</sup> However, these views of the ultimate entrepreneur with the intention to grow can somewhat be of a romantic and glorified view that is not consistent with reality. Research in Sweden has shown that not all small business owners are interested in growth and there are several reasons that are particular for the SME. The macro economic environment has been unfavorable and the risk and difficulties to obtain external capital is a crucial topic for the SME. Also the adjustment and the increased workload and complexity involved as a large business, is a deterrent for growth. In addition, the consideration for uncertainty and insecurity for the future as well as the concern that the

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<sup>15</sup> Lundén, Björn and Svensson, Ulf, *Starta eget företag*, Björn Lundén Information AB, 2001, p. 99

<sup>16</sup> Ibid. p.73

<sup>17</sup> Johannisson, Bengt & Landström, Hans *Images of Entrepreneurship and Small Business*, Studentlitteratur, 1999 p. 68

<sup>18</sup> Wiklund, Johan, *Small Firm Growth and Performance*, Jönköpings International Business School, 1998 p. 2

competence and skills are inadequate for expansion are reasons that SME avoid or prevent growth.<sup>19</sup>

Over time SME can come to a point where new and additional skills and competence is needed. When the in-house competences are insufficient for reaching a desirable capacity, skills shortage has occurred. To deal with the competence gap, the choice is between developing in-house competences and acquiring external competences<sup>20</sup>. The entrepreneur does use external competence when there is a need for help. However, the advice comes from internal networks as a complement to consultants or instead of consultants.<sup>21</sup> That can be an indication for the fear of losing control or not have total power of all aspect of the business or it can simply be an affordable way for the small business to get advice.

Research has been conducted over the years that shows there are difference how to define what is an entrepreneur and how does an entrepreneur behave based on how the theories has developed overtime.<sup>22</sup> In general, entrepreneurs have been divided into five different types, the risk taker, the capitalist, the innovator, the potential seeker and the co-coordinator of limited resources.<sup>23</sup> The division of what type the entrepreneur is and the ability can be a reflection of what is it the SME want to do and what can the SME do. The common denominator is that risk is involved. The combination of the different types of entrepreneur can be decisive for the growth and result of the SME. The risk taker and the potential seeker can achieve goals differently then the innovator and the capitalist. There can of course be traits of all types or one type can be dominating in the behavior and performance of entrepreneurs and SME. All types of entrepreneurs are important for the development of society but they do differ in the roll on the impact of the economy. The innovator can be the creator of change in the market place while another entrepreneur can create and organize new business activities by taking advantage of the imperfections that exist on the market.<sup>24</sup>

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<sup>19</sup> Davidsson, Per, Frédéric Delmar, Wiklund, Johan, *Tillväxtföretagen i Sverige*, Studieförbundet Näringsliv och Samhälle, 2001, p. 23

<sup>20</sup> Johansson, Bengt & Landström, Hans *Images of Entrepreneurship and Small Business*, Studentlitteratur, 1999 p. 219

<sup>21</sup> Ibid. p.141

<sup>22</sup> Landström, Hans, *Entreprenörskapets rötter*, Studentlitteratur 1999, p 52

<sup>23</sup> Ibid. p. 53

<sup>24</sup> Ibid. p. 55

The European Commission has pronounced that are difference between large companies and SME, and that the smaller companies can encounter difficulties because of the size. The smaller companies have in general more problems in attracting capital for development for its operation. It is more difficult for the smaller companies to dispose large capital for expensive research and development. In addition, the smaller company have problems to be informed and to conform to government rules and legislation. In addition, they have less favorable conditions for long-term planning and business predictions.<sup>25</sup> It can be concluded that the SME differ compared to large company in what they aspire to do and what they are capable to do based on both behavior patterns and prerequisite conditions in the market place.

### **1.3 General Description of the Problem**

There is a large amount of goods and service that are sold and traded in the EU and in Sweden. In the EU, public procurement stands for 11% of the GDP and in Sweden goods and service in the procurement market is equivalent to 15% of the Swedish GDP<sup>26</sup>. As mentioned, it seems like SME only takes advantage of a small portion of the market and therefore has several state- and trade organization started to encourage entrepreneurs to take part of public procurements.

With the public procurement legislation there can be other future potential challenges for the SME. The EU legislation is intended to encourage cross border trade. If SME in the other member states are more used to present and work with public procurement contract, it might not seem difficult to place tenders across borders, which is the intention of the EU legislation. In the future it is realistic to think that the competition among the suppliers will not only be inside the own nation, but the competition can come from all members of the European Union. With the enlargement that means that competition can come from 27 countries. Therefore it is understandable that the Swedish trade organizations are taking action to encourage SME to start to pursue public procurement contracts and that the Trade Minister is

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<sup>25</sup> Industriförbundets rapport about Sweden and EU, *Små och medelstora företag i EU*, 1994 p. 8

<sup>26</sup>National Board of Trade in the publication *Gränslösa @ffärer 2000*, p. 16

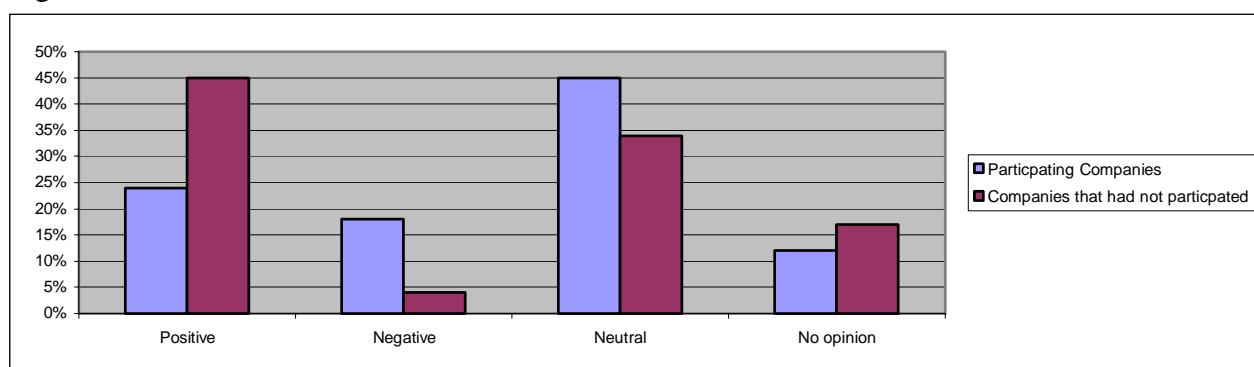
hoping that more Swedish companies will be active in both the Swedish and European procurement market.<sup>27</sup>

So the following could be summarized:

- SME can miss business opportunities since they are not aware of the potential business.
- SME can be at a disadvantage since the knowledge of public procurement process tends to be limited.
- Purchaser can in some cases spend more money instead of saving money because of the public procurement process.
- Taxpayers' money can be misused because of inadequate conducted procurements.

The official board for public procurement in Sweden, NOU<sup>28</sup> made a survey to measure progress and effects of the public procurement legislation.<sup>29</sup> One of the findings was that companies that had not participate in a public procurement process were more positive to public procurement than companies that had participated. That can indicate that as long as a SME is not entering the public procurement market there is an optimistic attitude that this can be a potential market for growth and development. However, after the SME try to break into the new market by participating in the public procurement process, the attitude change and the SME does not see public procurement market as an interesting market to pursue.

#### Negative or Positive Attitude Towards Public Procurement



Source: NOU rapport *Effekter av lagen om offentlig upphandling*, januari 1998

<sup>27</sup> National Board of Trade in the publication *Gränslösa @ffärer 2000*, p. 3

<sup>28</sup> NOU - Nämnden för Offentlig Upphandling

<sup>29</sup> NOU rapport *Effekter av lagen om offentlig upphandling*, januari 1998

In a rapport from the Confederation of Swedish Enterprises, 50% of SME that had experience with public procurement were of the opinion that there was unfair competition and that public procurement process was unsatisfactory.<sup>30</sup>

#### **1.4 Purpose**

Procurement can affect us in several ways, as citizens of a member state in the EU, as business professionals and as taxpayers. In the previous paragraphs it was discussed some potential problems why SME do not participate in the public procurement market and some of the reasons why government organizations and the commission is acting on the issues. Even if many of the problems and reasons are described above, I do not think it is understandable for an outsider to understand the difficulties a SME can encounter in the public procurement market. I will with this thesis describe the public procurement process by illustrating a few public procurement tenders. Then I will compare the differences and similarities in the tenders and evaluate the tenders with the requirements of the legislation. An analysis will be made to determine if public procurement is an appropriate market for the SME compared to how SME conduct business in general. Finally the analysis will try to detect if there are forces and hindrances that discourage participation from SME.

#### **1.5 Methodology**

My first intuition that SME was not awarded public procurement contract arose my interest to search deeper into the area. Reading literature and contacting people, my hunch was correctly found. SME do not participate in the public procurement market compared to how many SME there are established. My next objective was to look at the public procurement market itself. Here my ideas came to the conclusion that I wanted to reach to the micro level to see if I could find the answer to my question. What difficulties does SME encounter in the public procurement that they do not pursue a market that seems to have a tremendous

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<sup>30</sup> Confederation of Swedish Enterprises rapport *Småföretagare efterlyser bättre företagsklimat*, 2001-07-05 p. 4

potential. After that I decided to investigate the public procurement market, I searched in several books for methods that would suit my practical approach to find reasons why.<sup>31</sup>

After reading Robert K. Yin's book *Case Study Research*<sup>32</sup> I found a method that I believe will work for my studies and that it is an appropriate method to use. The book answered my questions on what questions to study, what data to collect and how to analyze the results. It is explained in the book that a Explanatory Case Study "is a preferred strategy when "how" or "why" questions are being posed, when the investigator has little control over events and when the focus is on a contemporary phenomenon with some real-life context." Case studies adds valuable know how to individual organizations, social and political phenomena. Case study has been a common research strategy in psychology, sociology, political science, and business, and cases studies are found in economics in a given industry or the economy of a city or region may be investigated by using a case study design. In all of the situations the distinctive need for case studies arises out of the desire to understand complex social phenomena. The case study allows an investigation to retain the holistic and meaningful characteristics of real-life events such as individual life cycles, organizational and managerial processes, neighborhood changes, international relations and maturation of industries. The questions asked in an explanatory case study are "what", "where", "how", and "why". I will have to search in several different areas to find a new dimension to the answer of my question. Business traditions, human behavior, and sound economic principles will have to be considered to find a reply if SME encounter difficulties on the public procurement market. What, where and why will be asked in the practical investigation and in the analysis. Case study is a helpful way to understand the problem in different dimensions. My aim is to explain the problem by the history of public procurement and by the fact of the legislation and the current situation, at the same time as I use a practical approach by being realistic to examine actual tenders.

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<sup>31</sup> Alvesson, M & Sköldbërg, K *Tolkning och Reflektion*, Studentlitteratur 1994, Andersen, IB, *Den uppenbara verkligheten – Val av samhällsvetenskaplig metod*, Studentlitteratur 1998, Jarrick, A & Josephson, O *Från tanke till text*, Studentlitteratur, Merriam, S. B, *Fallstudien som forskningsmetod*, Studentlitteratur 1994, Paulsson, Ulf *Uppsatser och Rapporter – med eller utan uppdragsgivare*, Studentlitteratur 1999, Widerberg, K *Att skriva vetenskapliga uppsatser*, Studentlitteratur 1994, [www.sce.carleton.ca](http://www.sce.carleton.ca) *How to Organize your Thesis*

<sup>32</sup> Yin, Roberts K, *Case Steady Research – Design and Methods* Second edition Sage Publications, Inc 1994



To reach the objective, I will focus in one area, search for tenders, examine, and compare tenders. From have studied several tenders, I will analysis the challenge and conclude if it is the actual tenders that are the source of the predicament or is it the public procurement regulation that creates visible and invisible barriers to the market. Those questions will be the conclusion of the work. Since it can be a homogeneous problem through out the EU, the cause of the problem can be identical. However, I will focus on the Swedish public procurement market and the conclusion will be made from the perspective of the Swedish market. In the legislative area, the Swedish legislation<sup>33</sup> and the directive that have been issued by the European Community legislation<sup>34</sup> will be examined. In addition, I will analyze if it is the legislation that is a hinder for SME to take advantage of the procurement market. I will mention the process and the legislation in that aspect so that I can go on to analyze the text with a practical example and my own analyze of the process.

To truly understand if SME encounter difficulties, I will take on a realistic approach and act as a small enterprise that takes part of the public procurement market. What kind of preparation work is involved and are there costs to entail just to get started to place tenders. How difficult is it to place a tender. Is the public procurement process similar to the sales process in the private market? If there is difference in the two sales processes what impact does it have on the sales process? This is all done to explain and response to the difficulties the SME can encounter on the public procurement market.

At the interviews, “what”, “where” and “how” will be answered. In the actual tenders “how” and “why” will be analyzed. Interviews are used to get background information and different aspects and opinions of the problem. By using books and reports the background and the purpose of the public procurement process will be explained. The aim and the purpose of the legislation will be compared with the tenders. I will support and validate the arguments with studies, reports, and books in this area. My empirical work is conducted from the point of view of as a small business, and the tenders have been selected and evaluated in a serious matter with the intention to acquire real understanding of the business.

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<sup>33</sup> LOU Lagen om offentlig upphandling 1992:1528

<sup>34</sup> Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts

In the book *Case Study Research - Design and Methods*, Robert K Yin states that there are traditional prejudices against the Case Study Strategy. Cases studies have been viewed as a less desirable form of inquiry than experiments or surveys. One concern has been that the author has been bias in its views and influenced the direction of the findings and conclusions. I will avoid this by placing a numerous public procurements tenders. Another concern of the case studies has been that the case studies do not provide enough bases for a scientific generalization. My intention is to show an example of a small market segment and investigate from the perspective that the same problem and solution in this particular area can be true in other areas. A possible continuation of this particular work could be to investigate another type of goods or service to see if there are similarities, or conduct a research of the public procurement market from the perspective of the purchaser to investigate if there are same concerns on that side of the market.

Another objection about case studies is that they take too long time and result in massive unreadable documents. My investigation is aimed at local authorities and municipalities and the turn around time for these organizations are known for being lengthy. The issue of time consuming will be part of the analysis of the problem. However, I do not found that the time consummation is a concern per se since I started my work 8 months prior to the target date. The analysis of the work consists of examining, categorizing, and tabulating the evidence to address the original purpose of the study. A general analytic strategy will be use to achieve the ultimate goal which is to present a new dimension of my inquiry of the problem. The role of the strategy is to assist me in concluding and interpreting the research successfully. A table of the details will be presented and I will show a pattern within the cases that will lead to the conclusion and that will explain the result. The patterns may be related to the variables of the study or related to a combination of the facts, the theories and practical participation. In addition to the pattern matching, I will add an explanation to show the associations and links in the research. Some of this links might seem causal but may reflect critical insights into the process. The analysis will use the information received through the public procurement documents and the interpretations is based on the findings. Finally, I will add all the

significant aspects of the cases studies to the other findings to finish the study and give some aspects on my analysis and conclusion.

## 1.6 Data Collection

The variety of data collection and the multiple sources are intended to construct validity in the research to granted a reliable and unbiased conclusion. The sources can be divided into six groups, documents, records, facts, interviews, observation, and participation. This list of sources is not exhaustive. I will use both primary data and secondary data<sup>35</sup>. The primary data for my empirical findings is the new data that I create by placing tenders as case studies and to conduct the actual work it entails to enter the public procurement market. The interviews conducted contained questions with open- ended answers to encourage elaboration on the subject from the interviewed person. The following up questions were based on the previous response, which gave me a great flexibility and possibility to adapt accordingly to their responses. Questions that could be answered yes or no were also asked to get clear and precise responses. The secondary data is statistics, conducted procurements, purchasing reports, published materials such as articles and books. Since the work is conducted in the public sector all documents concerning the procurements tenders can be requested according to the Swedish “Offentlighets Principen” (Transparency policy). To find relevant literature I used databases such as Lovisa at Lund University. Research was also done through Internet sites of the EU, Kommerskollegium, and NOU. In addition, the legal theory has also been collected from course material of the Master of European Affairs, Department of Business Law. The other business administration courses at the program<sup>36</sup> has contribute to the understanding of the general perspective of public procurement and the area’s specific complexity.

## 1.7 Methodological Challenges

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<sup>35</sup> Andersen, IB, *Den uppenbara verkligheten – Val av samhällsvetenskaplig metod 1998*, p 47

<sup>36</sup> International and European Financial Integration, International Marketing, Corporate Strategies in an Integrated World and International Strategic Human Resources Management.

This thesis will focus on the SME and the difficulties on the public procurement market. The question is simply to test how different the public procurement market is compared to private market. The public procurement market is divided between two partners, the supplier, and the purchaser and there are two ways to look at the problems and solutions in this area. For the purpose of the thesis, I have chosen to only look at the challenge from one side, the supplier. The selection of public tenders, the decision on what tenders to place and the proposal is in the perspective, as a businessperson would do. Since I have access to a small company that provides computer accessories, the tenders will be placed in the goods area instead of service. This is a purely coincidence and does not reflect any preference of my part. The access through a company will give me the opportunity to place public tenders. Without this access it would not be possible to research, describe and explain the problem in a true realistic way.

This particular market has some distinct characteristics since the products come from less than 10 manufactures in the USA and Japan. Therefore, the price structure of the products is easy to compare and that will give an unbiased situation for the price competition. The different companies can therefore not differ greatly of the offering price. That will give an aspect on how tenders are evaluated. The computer accessorizes products also entails the interesting subject of the principal of “environmentally friendly”. By selecting these particular products, I can also analyze how the issue of environment demands and requirements are handled in the tenders. Finally with these products there are alternative products that can be an excellent alternative to the price and environment conscience purchaser. With that aspect the tenders can be analysed from the aspect if the purchasers are aware of alternatives and the possibilities for suggestions.

## **1.8 Thesis Outline**

Chapter one explains the area of interest and the challenge in the public procurement process. The background is intended to give the reader some foundation of the problem and show that this area is of great interest for the public. In chapter two, the background of the public procurement area will be discussed with a more in-depth description and more detailed explanation of the history of public procurement. Facts on the impact of the public

procurement implementation will be presented and an assessment of the opinion and outcome of the process. Additionally, advantages and disadvantages and some criticism of the public procurement will be described. The directive 93/36 EEC and the Swedish legislation LOU 1992:1528 will be examined in the third chapter. First the history of public procurement and the development of the legislation until what it is today. The actual public procurement process will be described in chapter four. In chapter five, the empirical findings will be presented and explained. Empirical findings are the actual tenders that I have researched and examined. The examination of the tenders will be in a format like qualifications process the way that tenders are being evaluated. A table of similar demands and stipulations found in the researched tenders will be the base of the process. The tenders will be compared to each other and then compared with the legislation. In chapter six, an analysis of the tenders in regards of the legislation will be discussed. Furthermore I will analysis the public procurement process against a regular sales process and compare the theory of how SME conducts business. Finally, conclusion of the research case will be presented in chapter seven. The paper will end with reflections of the used method and result and suggestions for further studies.

## **2. What is Public Procurement**

### **2.1 History of Public Procurement**

Rules and regulations in the public procurement market have been applied since the 19<sup>th</sup> century in Sweden. The regulations were based on satisfying the tradition of being businesslike at the time and to ensure objectivity and transparency. However, at that time national products had preference at public procurements. New regulations were implemented in the 1920 to adapt to the new business environment. Now it was even more indicated that there was a difference between national and imported supplies. National products were prioritized and foreign supplies that contained national substance were preferred. In the 1950's, the regulation changed again and now procurement was focused on sound business practice, law and order, and publicity. The next change was in 1973 and the sound business practice was the fundamental frame with some suggestions to support SME and business located in the northern part of the country. It was also established that public procurement should act as a mechanism to expand the technical and industrial development<sup>37</sup>. In the beginning of the 90's new regulations were prepared to agree with the EEA-contract. The EEA-contract was an agreement between the member countries in EU and EFTA. The new regulation became the LOU 1992:1528 (Lagen om Offentlig Upphandling) and it's purpose was to fulfill the obligations of the Sweden's membership in the EU.<sup>38</sup> There were several changes from the previous regulations, but the fundamental objective of sound business practice was not anything new in the legislation. The major change was the more entities had to act as a contracting authority and make its purchases by using the public procurement procedure. That meant that many suppliers for the first time had to present public tenders and compete in an arena that were new and unusual for them.

### **2.2 Facts of the Implementation of the Public Procurement**

The goals established in the EC Treaty and the procurement directives that encourage intra-community trade, avoid corruption and bribery, and increase the competition to obtain better

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<sup>37</sup> Linder, Georg, *Handbok i offentlig upphandling*, Publica 1996, p 14

<sup>38</sup> *Ibid.* p 25

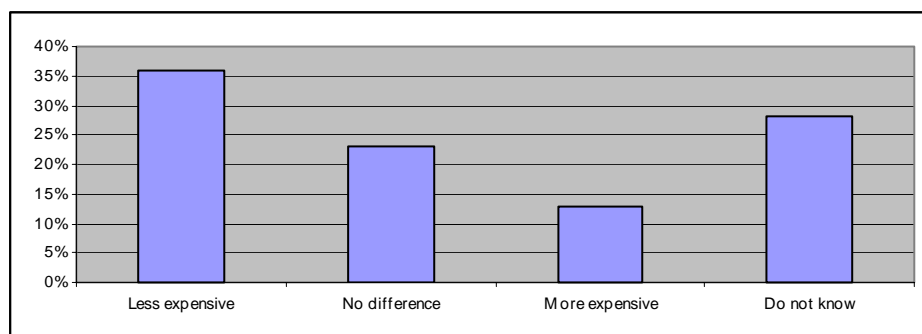
prices and reduce public spending was the ground for the Swedish legislation. The Swedish legislation LOU 1992:1528 went into effect on January 1, 1994 and Sweden became a full member of the European Union one year later. In 1998 NOU made a review to measure the effects of the public procurement legislation and a survey was conducted. Surveys were answered by contracting authorities such as government, municipalities, county councils, and public companies. Surveys were also sent to a number of companies that had answered tenders from the Official Journal and TED. The same number of surveys were sent to companies that had not been involved in public procurement process but they were registered members of SAF (Swedish Employer Organization) and that represented different company of suppliers and services.<sup>39</sup> Certainly it is difficult to analyze the outcome of the survey since it was voluntarily to reply and therefore the reader must understand that the conclusion can be skewed in a positive tone of the questions. There were several questions asked and some of conclusion that is interesting for this research paper is illustrated.

It is of interest to find if the goal of more cost efficiency is accomplished. Below is shown the response from the contracting authorities if they have made some savings since the implementation of LOU 1992:1528. 35% of the responders said that the purchase price had decreased since the implementation, but at the same time 28% of the responders did not know if the implementation of the legislation has made their purchase prices less expensive. Combined with the response that said there was no difference in price since the implementation, then almost half of the asked contracting authorities believed that there was no difference in the cost efficiency.

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<sup>39</sup> NOU rapport *Effekter av lagen om offentlig upphandling*, januari 1998, p. 8

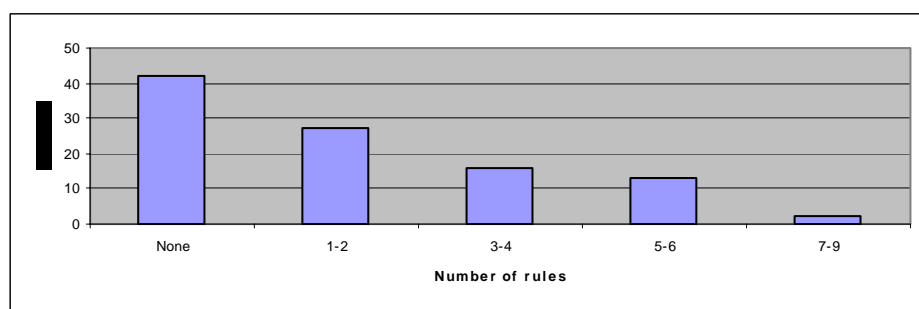
Effect on the purchase price after the implementation of LOU 1992:1528.



Source: *NOU rapport Effekter av lagen om offentlig upphandling, januari 1998*

Next what is of interest is to find if the purchaser and supplier like the legislation and naturally to ask if they have notice improvements with it. The survey asks about the number of rules in the legislation that the contracting authority felt that had a positive impact. Here the majority of the contracting authorities say that no rules have increased the efficiency of public procurement. The second largest segment is of the opinion that one to two rules have made the public procurement process more efficient.

*Number of rules that has improved the public procurement process*



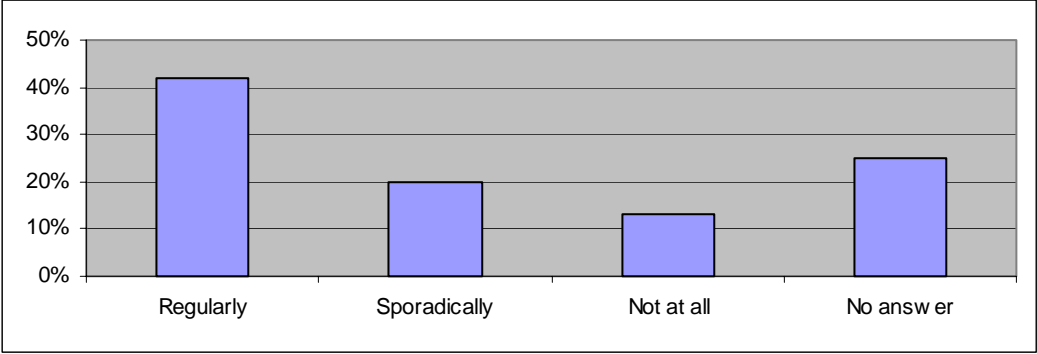
Source: *NOU rapport Effekter av lagen om offentlig upphandling, januari 1998*

For the public procurement market to meet the goal of a wide spread of offers and proposals to increase the competition and improve the pricing levels, it is important that as many suppliers as possible participate. It is therefore important that the suppliers know about the public procurement market and the tenders. The next question that was asked was about the suppliers' effort of observation of advertisement for public procurement contracts. Less than



half of the participating suppliers in the survey answered that they regularly search for advertisement for public procurement.

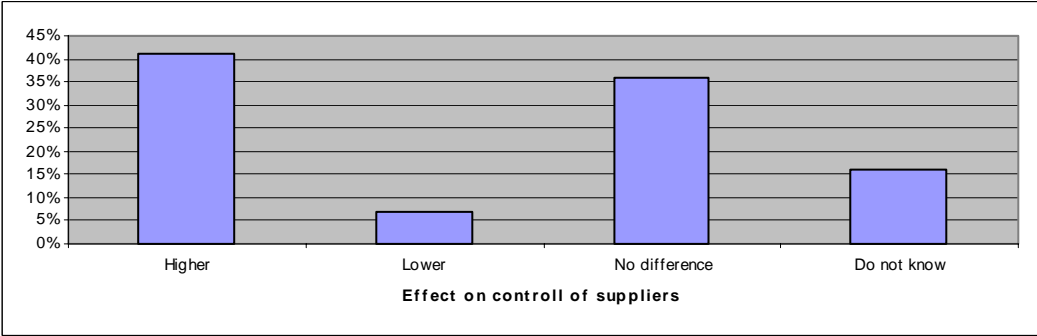
*How often the suppliers search for advertisement of public procurement contracts*



Source: NOU rapport Effekter av lagen om offentlig upphandling, januari 1998

The last questions that is interesting, is if the control of the suppliers have lead to better public procurements. Here 40% feels that public procurements have improved with the control of the suppliers. However, it is almost as many purchasers who do not feel that there has been an improvement with the control of the suppliers.

Effects on the public procurement process of the control of suppliers



Source: NOU rapport Effekter av lagen om offentlig upphandling, januari 1998

The findings from the survey conducted by NOU after four years of implementation of the legislation, the following can be determined. The purchasing price has been less expensive with the public procurement process. However, the number of rules of the process that has made process beneficial is not significant. Approximately half of the suppliers regularly

search for advertisement of public procurement. It is almost equilibrium of the opinion if the control of the suppliers has affected the public procurement process positively or not.

### **2.3 The Advantages and Disadvantages of Public Procurement**

One of the main goals of public procurement is ensure that the taxpayers' money is used in the most efficient way and that the money will be spent in the most appropriate manner. Since the implementation of the present public procurement process many beneficial economic effects have been noted. Even there have been reports that the public procurement process has made it more expensive to make purchases. Over all, LOU 1992:1528 as made the public procurement process more effective and resulted in savings. NOU has made calculations that Sweden is saving 1% of the total amount of the public procurement funding.<sup>40</sup> It is in the municipalities where most savings have been done. Among the different sectors, the municipalities are the most positive to the public procurement process.

On the other hand, there are reports and complaints to the competition authorities that the municipalities have terminate the public procurement process when they discovered that private tenders were more beneficial when both private and public companies were presented. The competition is also distorted since public companies can offer lower prices than private companies if that depends on that the public companies are substituted by state aid. In addition, there have been reports that municipalities are using its role as an authority to award procurement contracts to public companies.<sup>41</sup> With the demand that the tenders must be advertised to give access to a sufficient number of competitors, more suppliers are made aware of potential business. More suppliers would order tenders if there was a more uncomplicated way to observe the publishing of the tenders. The Internet might be blamed for the confusing and chaotic sources where tenders can be found because of its quick appearance and lack of regulations in the 90's. The enforcement of the publishing of public procurements over the threshold in the Official Journal and TED is an encouraging approach to increase the intra-community trade and increase competition. However, here the language barrier limits

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<sup>40</sup> NOU rapport Effekter av lagen om offentlig upphandling, januari 1998. p. 58

<sup>41</sup> Linder, Georg, *Handbok i offentlig upphandling*, Publica 1996, p. 103

the response from suppliers. If English were accepted language at all public procurement processes the amount of cross-border replies would probably increase significantly. The prohibition of negotiation is intended to ensure objectivity and make it simple to compare the tenders. Many suppliers agree that the lack of negotiate creates higher prices and lower the quality for the customer. Large contracting authorities are of the same opinion and they argue that with complicated public procurement negotiation is necessary for a positive result.

## **2.4 Criticism of the Public Procurement Process**

The public procurement process can be criticized for several reasons. The European commission has observed that the formal demands in the process can be difficult and there can be considerable expenses to conduct a proposal. The language for cross-border trade is an obstacle and it can be difficult to gain access to the database of public procurement<sup>42</sup> The Swedish Federation of Trade assessed their members concerns and the following were stated.

- In the contracting documents there is need for both standardization and an extension of the requested demands. Some contracting documents are so vague that the supplier might offer incorrect products while other contracting documents are too precise. In the too meticulous contracting documents the wrong products can be requested and the purchaser that is not up-dated in the particular market can neglect new merchandise and inventions. Direct relevance to the requested product can often be questioned. When the contracting documents are too vague, too detailed or non-relevant demands are made, this can lead to that a limited number of suppliers will make offers and that will result in a limited competition.
- The lack of education and experience among the personal that deals with the public procurement has been observed. On the purchasing side educational seminars has been offered and many staffers has attended classes in how to do correct public procurements.

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<sup>42</sup> Industriförbundets rapport about Sweden and EU, *Små och medelstora företag i EU*, 1994 p. 39

- There has been signs of that the purchasers are using the public procurement process to make a price inventory. The purchasers have tested the market to see what is the lowest or highest price to expect at a purchase. Another problem with pricing is that a purchaser expects that a private entrepreneur should be able to offer a much lower price than the public company. The private entrepreneurs can be dumping the prices just to get in on the market and then later will make up for the losses in other areas. On the other hand, if a public company can offer much lower prices than a private entrepreneur that can depend on that the public company receives state funding for its operation. With so many aspects in pricing, it is difficult to make the correct analyze of the pricing strategy.
- In many contracting documents a bonus or discount is required. Again it can be difficult to analyze the correct price since the stipulation of the reduction can vary from one supplier to another. Usually demands for bonus and discounts make the products more expensive.
- To avoid commitment many contracting authorities are using a contract called “framework agreement”. With a framework agreement the contracting authority is not required to make any purchases but the purchaser can demand that the agreed product or service must be available at all times. This might seem to be a clever solution to avoid commitment but it make the product more expensive since the supplier must ensure a way to make up for the cost of having products readily available.
- Many times the public procurement process is not conducted in the correct way or not conducted at all. The possibilities for a supplier to influence the process if they feel that the processes incorrect or could be done in a better way is almost no existing. The most common reason for not want to bring attention to incorrect public procurement process is the possibility to be completely omitted or reduce the chances at the qualification and suitability process. The prospect of demanding sanctions or receiving damaging is complicated and unusual.<sup>43</sup>

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<sup>43</sup> Swedish Federation of Trade [www.svenskhandel.se](http://www.svenskhandel.se)

The difficulties in the public procurement process are several. The matters become more complicated since there are three interest groups, the contracting authority which is represented by the purchaser, the supplier, and the taxpayer. The purchaser has traditions how the public procurement process has been conducted. The ultimate directive for the purchaser is to find the most economic advantageous tender at the same time to ensure that the supplier follows rules positioned by the legislation. The supplier is encourage of the large potential that the public procurement can lead to and sees new venues for growth and expansion for the company. The taxpayer is the one that pays and ultimately uses or get the advantage the product and his interest can be to ensure that public procurement process is part of the juridical system that guarantees justice and access to all interested parties. The question is if all three interest groups can be equally satisfied in the process.

### 3. Public Procurement in the Legislation

#### 3.1 The Legal Background of Public Procurement in the EU

To be able to determine and to understand if SME encounter difficulties in the public procurement area, the legislation will be described. The European Treaty is the base for the creation of the common market. The European integration is based upon a custom union, which will become an economic union, monetary union and political union. To create this union, a common market has been developed. First the abolition of tariffs, custom duties, quotas and administrative obstacles were imposed. Secondly, the creation of a fair and effective market with an absence of dominance and cartels was created to encourage inter-community trade. All tariffs were abolished by the end of the first transitional period on December 31, 1969.<sup>44</sup> However, non-tariff protections were more complicated to remove since that involves long-time establishment and change of patterns and practices. The public procurement was identified as an actual non-tariff barrier. With the European Commission's White Paper for the Completion of the Single Market<sup>45</sup> framework was provided to address this. The issue became urgent since at the time procurement contained 15 percent of the Community's GDP.<sup>46</sup> The public procurement market has since then increased and is expected to continue to increase. The European Commission claimed the regulation of public procurement throughout the member states could save 0,5 percent of the GDP to the public sector.<sup>47</sup> Reports from Denmark claimed that 20-40 percent could be saved in public procurement contracts and a British report claimed savings from car maintenance of 1 percent and 25 percent on savings of cleaning contracts.<sup>48</sup>

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<sup>44</sup> Bovis, Christopher *EC Public Procurement Law*, Longman 1997, p. 9

<sup>45</sup> European Commission, White Paper for the Completion of the Internal Market, (COM) 85 310 fin., 1985.

<sup>46</sup> Bovis, Christopher *EC Public Procurement Law*, Longman 1997, p. 12

<sup>47</sup> *Ibid.* p. 19

<sup>48</sup> Kjellström, Anders *EG-rätt för Praktiker*, EuroLaw E.E.I.G 1997, p. 86

Each member country's procurement markets in 1994 is shown below.

State	Germany	Italy	France	UK	Spain	Belgium
Procurement (EURO m).	176,927	142,456	69,897	65,206	52,866	26,938

State	Nederland	Denmark	Portugal	Greece	Ireland	Luxembourg
Procurement (EURO m.)	25,412	21,482	7,042	6,531	5,936	1,253

*Sources: Commission of the European Communities<sup>49</sup>*

The structure of the purchasing structure varies among the countries. The division of procurement patterns can be described from centralized, decentralized, mixture of centralized and decentralized and highly decentralized. Ireland, Portugal and Greece have centralized procurement control while Netherlands, and Denmark are decentralized. Germany and Belgium are highly decentralized in their procurement process.

### **3.2 The European Law on Public Procurement**

The European Treaty and its amending Maastricht Treaty on European Union do not contain precise provisions on public procurement. Still the provision on non-discrimination in article 13, the prohibition to barriers to intra-Community trade in article 30, the freedom to provide service in article 49 and the right to establishment in article 43 can be applied in order to regulate government purchasing and prevent discriminatory procurements practices in the member states. The Community decided for directives since that take into account the member states legal systems and national sensibilities and particularities in the procurement method. To regulate the public market, the present public procurement provisions are contained in following directives

- 92/50 for service,
- 93/36 for supplies,

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<sup>49</sup> Bovis, Christopher *EC Public Procurement Law*, Longman 1997, p. 12

- 93/37 for works,
- 93/38 utilities
- 89/665 and 92/13 for remedies<sup>50</sup>

The goal of public procurement is to ensure free movement of goods and services, to ensure equality of opportunities for those pursuing public contracts and to abolish discrimination based on nationality in the award of contracts. At the same time the taxpayer's money is being used in the best way, and the public procurement will strengthen the European companies and encourage growth within the market.

It is relevant to know and understand that public procurement regulation is based on the value of the amount of goods or service that is being purchased. There is a threshold of value of the contract that the regulation applies to. The value of the threshold differs pending of the sector. Under the threshold the public procurement directive does not apply. The thresholds are published in the Official Journal in the beginning of November each year.<sup>51</sup> The following thresholds are valid from January 1, 2002<sup>52</sup>.

<u>Sector</u>	<u>Euro</u>
Work and construction projects	5 000 000
Telecommunication supplies	600 000
Utilities	400 000
<u>Supplies and Service</u>	<u>200 000</u>

*Source: www.nou.se*

Each directive provides for methods of how to calculate these values. It is not acceptable to split the contracts to decrease the value with the intention of avoiding the rules of the directives.

The Commission's power in relation to the enforcement of the EU public procurement administration is the same as its powers to the enforcement of any other Community

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<sup>50</sup> Kapteyn P.J.G & VerLoren van Themaat, *P Introduction to the Law of the European Communities*, Kluwer Law International 1998, p. 764

<sup>51</sup> Directive 93/36/EEC, article 5d

<sup>52</sup> www.nou.se



obligation. The Commission may bring proceedings against a Member State under article 169 226 of the EEC treaty and request actions under article 243 of the same treaty including the suspension of a contract<sup>53</sup>

### 3.3 The Swedish Procurement Law

The rules for the public procurement have a history of over 100 years in Sweden. Before 1973, Swedish goods had precedence at public procurements. As of January 1, 1994, the Swedish rules in public procurements co-coordinated with the members of the EEA-area.<sup>54</sup> This resulted in Sweden the law LOU 1992:1528. When Sweden became at full member of the European Union the directives were valid completely<sup>55</sup>. The Swedish authority that supervises the public procurement process is NOU.

These EC- directives consist the ground for the Swedish legislation LOU 1992:1528.

<u>Directive</u>	<u>Area</u>	<u>LOU 1992:1528</u>
93/36 EEC	Goods	Chapter 2
93/37 EEC	Works	Chapter 3
92/50 EEC	Service	Chapter 5
93/38 EEC	Utilities	Chapter 4
89/665 EEC	Remedies	Chapter 7
91/13 EEC	Remedies	Chapter 7

In the Swedish legislation two chapters were added, chapter 1 and 6. Chapter 1 is the common rules that apply in all the chapters and chapter 6 is the procurement that is below the threshold.<sup>56</sup> The law of public procurement is to ensure that no supplier is in a favorite position or that a supplier is at a disadvantage. Also the law ensures that a buyer must recognize offers from several suppliers and that favoritism are not posted on personal or

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<sup>53</sup> Tyrrel, A & Bedford, B Public Procurement in Europe: Enforcement and Remedies, Butterworths 1997, p. 12

<sup>54</sup> The members of the European Union and Norway, Iceland and Liechtenstein

<sup>55</sup> Norberg L, Israelsson M, Israelsson B, *Offentlig Upphandling – en outnyttjad miljardmarknad*, Industrilitteratur 1999, p. 7

<sup>56</sup> *Ibid.* p. 16

regional grounds. With the competition, the terms for the buyer should be of the best quality and the best prices and the competition will be fair.

## 4. How Does Public Procurement Work

### 4.1 The Public Procurement Process

For this paper I will examine and describe the area within the public procurement of supplies and goods. The concerned legislation is directive 93/36 EEC<sup>57</sup> and the Swedish LOU 1992:1528 Chapter 2.<sup>58</sup> Since this work is aimed at the smaller business, chapter 6, which is for tenders under the threshold, will also be described. First it is necessary to establish who is the contracting entity that the public procurement applies to. It is stated in the directive that “ ‘contracting authorities’ shall be the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or bodies governed by public law”<sup>59</sup>. There is in the directive a list that refers to approximately 1800 organizations of the member countries of 1993 that are “contracting authorities”. A simple way to explain it would be to say that it is an organization that is using taxpayers’ money for purchasing. In the LOU 1992:1528 it is stated that the “contracting authority” includes companies, associations, temporary organizations and trust funds that have the interest to supply and provide the needs for the public as long as the need is not of industrial or commercial character.<sup>60</sup> There is not a list that refers to the different undertakings in Sweden. According to NOU, the different undertakings can decide themselves if they are included under the LOU 1992:1528 or not.<sup>61</sup>

Next step in the public procurement process is to see if the value of the contract is above or below the threshold. Pending on the value of the contract it is then decided under which award procedure should be used. There are now six different procedures established.

LOU 1992:1528 Chapter 2 - 5

- Open Procedure
- Selective Procedure
- Negotiated Procedure

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<sup>57</sup> Council Directive 93/36/EEC O.J L199/1 of 14 June 1993 coordinating procedures for the award of public supply contracts

<sup>58</sup> The Act (SFS 1992:1528) on public Procurement, Chapter 2 Public Supply Contract

<sup>59</sup> Directive 93/36/EEC O.J L199/1, article 1b

<sup>60</sup> LOU 1992:1528 Chapter 1, §6

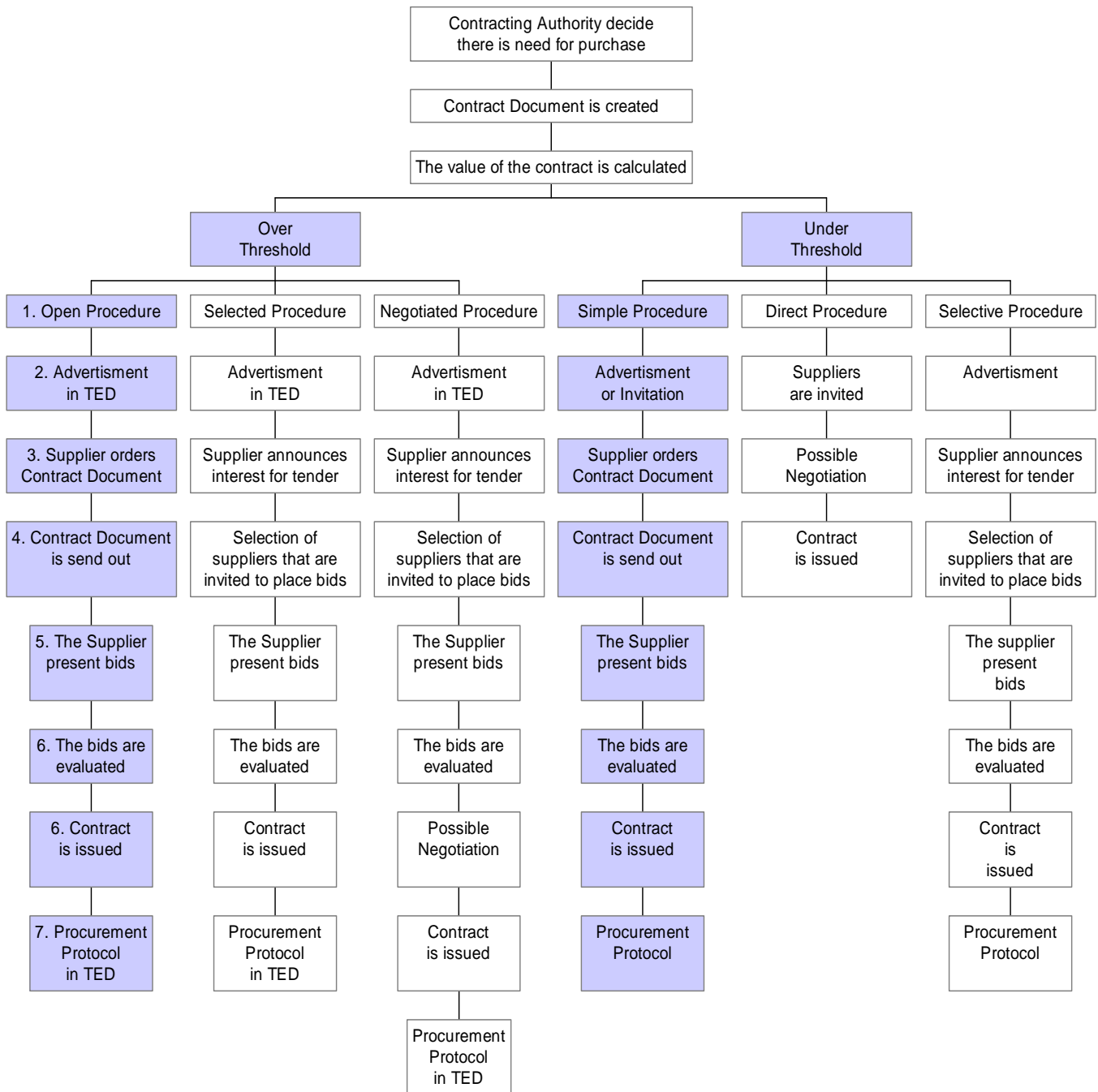
<sup>61</sup> [www.nou.se](http://www.nou.se)

#### LOU 1992:1528 Chapter 6

- Simplified Procedure
- Selective Procedure
- Direct Procedure.

It is stated in the directive 93/36/EEC and in the LOU 1992:1928 that negotiated procedure should only be used in exceptional cases and if the received tenders in open or selective procedure did not fulfill the expectation. The public procurement must be advertised either in the local media or if it is over threshold in TED. There are precise references for the timeliness for the advertisement, and the sending of the contract document in the directive pending on which procedure that is used. However, there is no reference in the timeliness for the response from the purchaser to the supplier after that the tenders are received. After the tenders are obtained by the contracting authority, the purchaser evaluates the tenders and make an announcement to whom the contract is awarded to. The public procurement procedure ends by a protocol is issued. The flow chart shows the different public procurement process that are in use now.

### Public Procurement Process



## **4.2 Tender Process**

For the purpose to examine a tender in more details Open and Simplified Procedures will be used. That is the process that is colored on the previous page.

1. Open Procedure means that all suppliers are permitted to present tenders. The advertisement is mandatory in the Official Journal and in TED. The procurement time shall be at least 52 days from the date the document is send for publication.
2. Besides the advertisement in the Official Journal and TED, the purchaser can advertise in the local press or notify via letter to potential suppliers.
3. The supplier request the contract document and this must be done within the time limit. There can be a last date when the contract can be requested or it is advertised when the contract must be submitted to the purchaser.
4. The contract document is send to the supplier through the regular mail or via e-mail usually be return mail.
5. The supplier must submit the contract document in that language that the purchaser requires and all information that is requested must be presented. The contract document must be at the purchaser possession as stated in the document or the tender will not be evaluated.
6. The tenders are opened and evaluated. The purchaser can only evaluate the tenders according to the contract document and can not apply new measurements for its evaluation. In most tenders there are two ways to evaluate the tenders, the qualification and the suitable appraisal category. More information is provided below to explain the categories.
7. A protocol is obtained to explain who is awarded the contract. Any person or undertakings can request this document since it falls under the transparency legislation.

## **4.3 Qualification and Appraisal of the Supplier**

Just like in the private business world, the purchaser is entitle to ensure that the supplier is qualified and suitable for the assignment and that the supplier has the capacity to handled the

quantity and quality of the required business. According to the directives there are criteria on how to qualify the supplier. The supplier can be omitted from participation if it:

- Is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations.
- Is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws and regulations.
- Has been convicted of an offence concerning his professional conduct.
- Has been guilty of grave professional misconduct proven by any means, which the contracting authorities can justify.
- Has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority.
- Has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or those of the country of the contracting authority.
- Is guilty of serious misrepresentation in supplying the information required.

The supplier verifies this by admitting an attest from the authorities. The supplier is also required to prove that the company is registered in a trade or professional register as prescribed in the country of establishment. Evidence of the supplier's financial and economic standing can be confirmed by a statement from the bank or by presenting financial statements. To show that the supplier has the experience and capacity to handle the business former customers can be used as references.<sup>62</sup>

To ensure that the supplier is suitable, the purchaser stipulates demands that “shall” be met or “ought” to be met. To qualify for a continued evaluation the supplier in the suitable category must fulfill the “shall demands”. If the shall demands are not met the supplier can not continue on the next phase to evaluate the “ought to demands” that are met. This is

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<sup>62</sup> Directive 93/36 EEC O.J L199/1 article 20,21,22,23

explained in the legislation and that the demands should have relevance to the particular procurement.<sup>63</sup> This is established in the Case *Beentjes versus Netherlands* that the examination of the suitability and qualification are two different operations in the procedure and that the requested evidence must be related to the supplies.<sup>64</sup> In the case *Commission versus Italy* it was again emphasize that evidence can only be requested according to the directive.<sup>65</sup>

#### 4.4 The Awarding Criteria of the Contract

According to legislation the contracting authority can award the contract to

- The lowest price
- The most economically advantageous tender

What is the most economically advantageous tender is based on a series of criteria selected by the purchaser. The directive states what kind of criteria that can be used to determine this. It can be based on delivery, cost effectiveness, profitability, technical merit, quality, service, security, etc. The list is non-exclusive.<sup>66</sup> Nevertheless, the order of precedence should be stated in the contracting document with the most important criteria first. This is logically done to avoid that the purchaser will make arbitrary choices.

No other criteria can be used for awarding a contract, but the Commission has published a document to clarify the possibilities under the existing Community legal framework for integrating social considerations into public procurement<sup>67</sup>. This means that the contract can be awarded to a company that has employed impaired or other less privileged persons or in any other way contributed to social development. To award a contract on social contribution, the most economically advantageous tender criteria will have to be based for the decision as the legislation is today. The environment aspects have been critical subjects in the public procurement process recently. As mentioned previously there is no provision in the European

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<sup>63</sup> Directive 93/36/EEC O.J L199/1 article 23. LOU chapter 1, §16

<sup>64</sup> C-31/87 *Gebroeders Beentjes BV v. The Netherlands* [1998] ECR 4635

<sup>65</sup> C-360/89 *Commission versus Italy* [1992] ECR I-3401

<sup>66</sup> Trepte, Peter-Armin *Public Procurement in the EC*, CCH Europe 1993, p. 162

<sup>67</sup> Euro Info Center *Bulletin* nr 4/2001, p. 3



Treaty that directly refers to public procurement. For the support of environmental demands, article 2 and article 3 (1) EC can be used.<sup>68</sup> The possibilities to require environment demands is according to NOU limited. The review must be done in the assessment of the suppliers' technical, financial and economical capacity.<sup>69</sup> Exclusion of a supplier can be done if the supplier has breached the environmental provision based on the regulations in LOU 1992:1528 chapter 1 §17 p3 "*Has been guilty of grave professional misconduct proven by any means, which the contracting authorities can justify*". It is the opinion of NOU that environmental factors can be considered as the most economically advantageous tender if there is a direct relation of the purchased product.

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<sup>68</sup> NOU rapport 15/98-29 *Regeringsuppdrag (1998-01-15) om ekologiskt hållbar offentlig upphandling* p. 5

<sup>69</sup> *Ibid.* p. 2.

## **5. How Public Procurement Works in Reality**

### **5.1 Empirical Findings**

With the understanding of the background of public procurement and insight of the implementation and current legislation, the next step is to actually look at the empirical findings that are the twelve public procurement tenders that were selected. It is in the empirical findings where the research is assembled to find the difficulties SME can encounter in the public procurement process. The research can be explained in the following steps.

- Search for public procurement tenders
- Presentation and evaluation of the tenders
- Response of tenders
- Compare the tenders with the legislation

### **5.2 Search for Public Procurement Tenders**

The empirical search for public procurement tenders took eight months. The research started in October 2001 and stopped in May 2002. During these months, eight Internet sites that were free of charge and one site where subscription was needed were used.<sup>70</sup> There are more sites, however I limited the sites because of time efficiency. The selected sites attracted me since I found them easy to work with. All the public procurement tenders that were requested were via the subscription service. On the sites that are free of charge only part of the documents could be requested. Most municipalities in Sweden have an Internet site that publishes public procurement. However, it is not time efficient to search 289 municipalities<sup>71</sup> daily for public procurement tenders. I had not decided how many tenders to search for. Twelve public procurement tenders were appropriate according to the CPV coding and in the titles of the documents for this particular research study.<sup>72</sup> The selected products, computer accessories and consumables, are a range of products that is always in demand in all offices and administrations today. Therefore all contracting authorities will sooner or later have to initiate

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<sup>70</sup> [www.eur-op.eu.int](http://www.eur-op.eu.int), [www.api.se](http://www.api.se), [www.annons.kommentus.se](http://www.annons.kommentus.se), [www.if.svekom.se](http://www.if.svekom.se), [www.ajour.se/kommun](http://www.ajour.se/kommun), [www.offentlig.kommers.se](http://www.offentlig.kommers.se), [www.upphandlingar.nu](http://www.upphandlingar.nu), [www.sodertorn.nu](http://www.sodertorn.nu)

<sup>71</sup> [www.svekom.se](http://www.svekom.se) there are 289 municipalities in Sweden. The last municipality was added in 1999.

<sup>72</sup> See appendix for compilation of the public procurement tenders

a public procurement for these products. Some purchaser chose to combine the products with other office supplies while other purchaser issue a separate contract for computer consumables. In the tenders where office supplies are combined with computer consumables there is an option for the supplier to make offers on part of the tender. However, in several of the tenders is it noted that the contracting authority prefers one supplier.

### **5.3 Description of the Public Procurement Products**

As the devolvement of computers and the increased use of computers the demand for accessories and consumables have increased accordingly. The markets consist of a few large producers that have developed the accessories to their hardware products.<sup>73</sup> The market also consists of companies that have developed products that are generic. Some of the large manufactures have patent on their consumables products or at least a part of the consumable products. This means that there is limitation to develop and sell generic products. There are also companies that have developed consumables that are re-filled and re-used. These products are called compatibles. Even if there are generic and compatible products, some of the manufactories of the hardware only guarantee the products if the original accessories and consumables are used. The majority of the products are designed and developed in the USA. Some companies have their R&D also spread to Europe and Japan.

As the use of computers have increased, the price of hardware has decreased and the price of consumables have increased. One can only speculate but it seems like the manufactures are focusing on selling the hardware inexpensively and then make up the profit in the consumables. It is today, for example possible to buy a computer printer for the same or less price than the necessary jet cartridges that is need to use the printer. This does not seem like an issue that the contracting authorities has recognised. When the decision of what kind of hardware to buy and use, the pricing of the consumables should investigated prior. One way to decrease the cost of the consumables is to use compatible products. This is a rather new area and there have been problems with the quality of the compatible products. However, there is a constant R&D in this area and the products are continuously improving and taking

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<sup>73</sup> Hewlett Packer, Brother, Canon, IBM/Lexmark, Olivetti, Apple, OKI

market shares from the brand products. At this time there is speculation if the competitions is distorted. The EU Commissioner Mario Monti is suggesting an investigation if anti-competitive practices in the sale of ink cartages is taking place. Mr. Monti is also suggesting an investigation in the USA.<sup>74</sup>

Most of the producers have established subsidiaries in several countries and established manufacturing plants in USA, Asia and Europe. The majority of the manufactures are distributing and selling the products via distributors. In Sweden there are mainly four distributors.<sup>75</sup> These distributors sell the products to suppliers<sup>76</sup> that sell to business to business, to retailers and to the final consumer. Many of the suppliers have established e-commerce via web stores. Some of the suppliers are large office supply chains while there are other suppliers that only sell computer accessories and consumables.

#### **5.4 Presentation and Comparison of 12 Public Procurement Tenders**

The following public procurement tenders from 12 contracting authorities were selected for the research study.

<u>Tender</u>	<u>Contracting Entity</u>
1	Borlänge's Municipality
2	Haninge's Municipality
3	Hälsingland's Province
4	Kalmar County Council
5	Mönsterås Municipality
6	Stockholm County Council

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<sup>74</sup> Guerrero, F and Morrison, S. *Printer makers face EU investigation: Competition probe into whether companies use illegal tactics to force customers to buy own-brand ink cartridges*. Financial Times, May 16, 2002

<sup>75</sup> Scribona Distribution, Oscar Dellert, Despec Supplies and Computer 2000

<sup>76</sup> There are approximately between 2500 – 3000 suppliers in Sweden.

<u>Tender</u>	<u>Contracting Entity</u>
7	Stouruman's Municipality
8	Sunne's Municipality
9	Södertälje's Municipality
10	Tierp's Municipality
11	Ängelholm's Hospital
12	Östersund's Municipality

All the requested tenders were according to the CPV 30 000 000<sup>77</sup>. These are products that computer accessories companies can provide. Some of the tenders requested additional products such general office supplies, toys or educational material. There were more tenders requested, but after being contacted by the contracting authority it was discovered that even with the CPV 300 000 000 not all tenders were appropriate for this research. For example, a photocopy machine is also under the same CPV number 30 000 000.

The tenders come from eight municipalities, two county councils, one province and one hospital. The public procurement tenders were either a simple or open procedure according to the value of the contract. The value of the contracts ranged from 400 000 SKR to 6 575 000 SKR. The value of the contract was not clearly stated in four of the tenders. The extent of the contract was calculated on previous years consumption and there are no guarantees for the volume of the purchases. The consumption from previous years is only an indication of expected purchases. Four of the municipalities had combined the public procurement with other municipalities. The public procurement tenders were requested via e-mail and the public procurement documents were received either through e-mail or regular mail. All tenders came in a timely matter. All the contracts had a length for 24 months with the option to extend for another 12 months.

All of the tenders had either only shall demands or both shall- and ought to demands. Some of the peculiar demands are described below in the individual description of the tenders. All the tenders had environmental demands. The demands differed from being very specific and

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<sup>77</sup> CPV 30 000 000 stands for Office and computer machinery, equipment and supplies

requested as a shall demand to just a request general administration. Free deliveries were requested in eleven of the tenders and therefore I assume that it was an oversight from the twelfth tender not to request free delivery. The request of statistical reports came from eight of the tenders. References were demanded in five of the tenders. Five of the tenders asked for rebates in various percent rates. The time of set prices varied from not being stated at all, until three to twelve months. Also the method of re-calculating price increased differed. Some tenders stated different kind of indexes while others wanted to see proof of actual price increases from the producer. Some of the tenders stated the minimum price increase in percent while other wanted actual price change as basis for price change. Some of the tenders asked the supplier to state the percent of the influence of foreign currency in the pricing. All of the tenders had the most economic advantageous as criteria for award. Nine of the tenders stated the order and priority of the criteria. Out of those, price was the first priority except in two tender. All the contracting authorities were contacted via e-mail to request the procurement protocol. The time for the request of the protocol until I received the protocol varied. After had waited for 15 days, I contacted four of the contracting entities personally.<sup>78</sup> I was then promised to get the procurement protocol. Overall the tenders differed in demands except in the criteria for the award. Below is a matrix display the description above.<sup>79</sup>

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<sup>78</sup> Tender 1,5, 7 and 8.

<sup>79</sup> This is an abbreviated matrix. The full matrix is in the appendix

<b>Contracting Entity</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
Type of procurement	Open procedure	Open procedure	Simple procedure	Simple procedure
Length of Contract	24 months	24 months	24 months	24 months
Option for extension of contract	12 months	12 months	12 months	12 months
Value of Contract	1 700 000	2 000 000	400 000	Not stated
Extent of Contract	Yes	Yes	Yes	Yes
Shall demands	Yes	Yes	Yes all of them	Yes
Ought demands	No	No	Not stated	Yes
Firm price	12 months	12 months	3 months	12 months
Request for rebates	Yes	No	No	No
Statistical demands	1/year	No	Not stated	Yes any time
Environmental demands	Yes	Yes	Yes	Yes
Request for references	No	Yes	Not stated	No
Award Criteria	Most economical	Most economical	Most economical	Most economical
Number of requested documents		13	23	1
Number of offered bids		8	7	1

<b>Contracting Entity</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
Type of procurement	Open procedure	Simple procedure	Simple procedure	Open procedure
Length of Contract	24 months	24 months	24 months	36 months
Option for extension of contract	12 months	12 months	Not stated	12 months
Value of Contract	1 000 000	Not stated	600 000	6 575 000
Extent of Contract	Yes	No information	No	Yes
Shall demands	Yes	Yes	Yes	Yes
Ought demands	No	Yes	No	No
Firm price	No	12 months	Not stated	Yes 12 months
Request for rebates	Yes	No	Yes	Yes
Statistical demands	1/year	1/year	No	Yes 1/year
Environmental demands	Yes	Yes	Yes	Yes
Request for references	No	No		Yes
Award Criteria	Most economical	Most economical	Most economical	Most economical
Number of requested documents		Not stated		
Number of offered bids		3		

<b>Contracting Entity</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>
Type of procurement	Open procedure	Simple procedure	Simple procedure	Open procedure
Length of Contract	24 months	24	24	24
Option for extension of contract	12 months	12	12	12
Value of Contract	1 300 000	400000	Not stated	Not
Extent of Contract	Yes	Yes	Yes	No
Shall demands	Yes	Yes	Yes	Yes
Ought demands	No	Yes	Yes	Yes
Firm price	Yes 6 months	Not stated	12 months	10 months
Request for rebates	Yes	No	No	No
Statistical demands	Yes 1/year	No	4/Year	1/year
Environmental demands	Yes	Yes	Yes	Yes
Request for references	Yes	Yes	Not stated	Yes
Award Criteria	Most economical	Most economical	Most economical	Most economical
Number of requested documents			6	
Number of offered bids			4	

The following are details that were found in each of the research tenders that can demonstrate possible causes for impediments.

#### Tender 1

The criteria for the most economic advantageous is stated but not how much of the different criteria is valued. The criteria are in the following order price, quality (suitable, durability, design, ergonomic), time of delivery / grade of service, assortment of products, routines of payment, environmental aspects

These criteria sounds like they are general used for all products and that the purchaser has not made adjustment for this particular public procurement. It is no need to question suitability and durability since the products are standardized and all suppliers will provide the same products. There can be no difference in the quality of the products.

There is one peculiar request in this public procurement and that it is that the purchaser wants the companies insurance accounted for. Here it is questionable if this request is in relevance for the products. The price adjustment is not mention and than it can be questionable if there are possibilities for price correction.

#### Tender 2

Of all the public procurement tenders that are examined here this is the most accurate tender according to the legislation. The tender is clear of the value and extent of the products. All demands are relevant to the product. The reply from the municipalities was in a form of a protocol where it was clear of what grounds the decision was made for the awarding contract. It was also stated on the protocol how many companies had requested the contracting document and how many had made an offer. Twelve companies had requested the documents and eight companies had made offers. This is the highest response rate of the research tenders that had made a decision.

#### Tender 3

Here it is stated that all the demands are shall demands. This means that all demands must be met to qualify for consideration. In the criteria for award it is stated that price is valued to 80%. It seems to be disproportion to have all demands, as shall demands when the price is so highly valued. 23 companies requested the documents, but only seven companies forwarded a



proposal. Out of these seven companies only three companies meet the demands for qualification for consideration.

#### Tender 4

This is a simple procedure but the value of the contract is not stated. However, this is not unusual in the tenders that are being examined that the value of the contract is not stated. This creates an uncertainty since the supplier does not know how much sales to expect. This public procurement document has several shall demands that are questionable. Here is a list of questions.

- The purchaser state that the cost for customer requested package must be stated in the tender. However, it is not stated what kind of the request of package they want.
- The purchaser says that the delivery ought to come directly form the suppliers stock. Only the largest companies have the possibility to meet this demand and it is questionable if this is of relevance to the product from which stock the product comes from
- The purchaser asks the supplier that they shall have a system for return, re-fill and re-use of the products. At the same time the purchaser states that they do not accept products that are re-filled.
- The purchaser has environmental demands in their shall demands where they want the supplier to ensure that the various concentration of chemical such as lead, mercury and chrome is not present in the packaging material of the products and that the products are free of toxic and carcinogenic substances. The supplier has limited means to ensure this. This request can only be demanded from the producer. If one supplier guarantees that the products are according to standard then all suppliers meet the standard. The same is true for the reverse situation since the products come from the same producer and the guarantees from the supplier can not differ. Therefore is an unnecessary demand to request from the supplier.

As the requested procurement protocol I got an answer via e-mail that one tender was received and that one supplier meet all the demands according to the public procurement document.

#### Tender 5

The value of the contract is under threshold but the purchaser has opted for open procedure. The most economic advantageous criteria are used for decision. In the document the purchaser states the criteria price, quality, environmental influences besides the compulsory demands, service and capacity, delivery timeliness, commercial and administrative competence, financial strength, and previous experience. It is stated that these criteria are not in priority or importance, which is against what is stated in the legislation. In §22, chapter one LOU 1992:1528 it is stated that the purchaser shall indicate what circumstance that are of importance, the order of importance and if possible according to degree of urgency.

#### Tender 6

The tender is a simple procedure but the value of the contract is not stated. However, in the procurement protocol the value is estimated to 900 000 kr. In this tender there are several abbreviations that refers to delivery and e-commerce agreements. The shall demand which says that the purchaser have the right to extend the contract for one more year. It is strange that a purchaser can make it to a demand to extend the sales agreement if the supplier does not want to sell. There is a request for electronic commerce and the purchaser want to exchange electronic transactions according to a specific system SFTI<sup>80</sup> and requesting the supplier to sign a contract for this EDI.<sup>81</sup> There is also a request that the supplier has unique ordering numbers according to the EAN- system. This system is a bar-code system that is universal. The charge for this is approximately 10 000 kr / year and this is requested just to be able to make the offer.

The procurement protocol was included in the response. Three companies had place tenders. One of the companies was excluded because the lack of the EAN-system and environmental documents.

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<sup>80</sup> SFTI Single Face to Industry

<sup>81</sup> EDI Electronic Document Interchange

### Tender 7

In this public procurement tender there are many environmental demands. There is a list of chemicals, pigments, plastics, solvents, flameproof materials, and rubber packaging that the products can not contain. In addition, there are demands against substance that are allergenic. Again, the demands are impossible for the supplier to be responsible for and since the products come from the same producer the response from the different supplier must be the same. The public procurement documents contain three pages that explain the production of paper and pulp and the consumption of paper products in Sweden. The paper also contains information of environmental labeling, return process and the environmental labeling the Swan. These pages are probably information for the purchaser. The information concluded, *“The only thing you as a purchaser need to do is to demand that the products are licenses under the Swan labeling and the printing office will take care of the rest”*.<sup>82</sup> It is also stated that paper that does not fulfill the labeling of Swan will not be purchased. The Swan is a Nordic labeling system so it is questionable if the purchaser might breach the legislation since the wording “or equivalent” is missing. In addition, it is questionable if it is correct to demand that the paper must be according to a Nordic environmental labeling. It can be looked upon as an attempt to exclude non-Nordic paper products.

The starting date of the contract is missing. It is stated that the public procurement contract is for 2002 – 2004. The closing date for submission was February 28, 2002 but it is impossible for a supplier to guess when the starting date is.

### Tender 8

In this public procurement contract, six municipalities are requesting the products jointly. This results to the biggest value of the researched tenders. Even though the contract is treated as one contract, the demands from the different municipalities vary. There is a request for a bonus system for two out of the six participating municipalities. While the rest do not use bonus system. In reality the supplier will have to increase the price for two of the municipalities with the same percent, as they want back at the end-of-the-year. While the other municipalities want the same percent rebate deducted from the price. This does not seem like an efficient way for price strategy.

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<sup>82</sup> Public procurement from Storuman municipality Consumables and Office Supplies, Paper 23:2

This contract calls free delivery, the same as all the contract. Here 260 different delivery addresses are mentioned. It is stated that deliveries will not be demanded to all the addresses, but it does not give any indication of how many delivery addresses the contract will entail.

The tenders also ask the suppliers to visit all the delivery addresses (260 delivery addresses) if there is a need for education and introduction. These education sessions shall be included in the price for the products. This is difficult for the supplier to estimate how much this can entail and the cost for this request. Also it is demanded that the products are carried in and that the deliveries are on disposable pallets. All disposable wrapping and return packaging are to be collected by the deliverer. This is a request that can be difficult to meet if the supplier does not deliver himself. According to Posten Företags Paket<sup>83</sup> they deliver to the loading dock and they use their own material that they collect and re-use. The disposable wrapping and pallets shall of course be recycled but it is an economic issue who will take of it.<sup>84</sup> This tender is difficult because there are too many different demands. It is understandable that the municipalities do not want to deal with the disposal or packing but to demand it from the supplier will probably cost them more. In addition, the request for education and introduction can be costly. The purchaser must understand that there is a charge for all requests and that it is the purchaser that pays for it.

Since I did not receive the requested procurement protocol I called one of the municipalities and was told that they did not know which of the municipalities had the protocol. I was referred to another municipality where a message was taken that I requested the procurement protocol. I had not received the protocol when I finished the research.

### Tender 9

In the tender the purchaser is stating that the supplier ought to have the experience to deliver to organizations like municipalities. This request excludes all companies that do not deliver to municipalities, at the same time it limits the purchaser to use a new supplier. The competition can not be maximized. This goes against the purpose of the procurement directive and the LOU 1992:1528 where in the first chapter §4 it is stated that the award of public procurement contract should take advantage of existing competition.

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<sup>83</sup> The Post Office in Sweden has a package service for company deliveries.

<sup>84</sup> Interview with environmental coordinator.

In the tenders there are some environmental demands that can be practical difficult for the supplier to ensure. The purchaser asks environmental certification to be submitted for all products that are certified. That means in reality that several hundred certifications should be submitted. In addition, the purchaser have as a shall demand that the delivery trucks are only allowed to idle for one minute during deliveries. Most municipalities have one-minute idling as a regulation. Therefore it can be questionable if it is the duty of the supplier to enforce the law.

#### Tender 10

What is unusual is the priority of the criteria for the awarding contract. Service is the first priority before price, and quality. The value of the priorities is not mentioned. It is stated that the service evaluation will be based on the supplier's stock-keeping, delivery capacity, delivery time, service grade, order routines product range and guarantees. It is questionable why the product range is of importance since it is later stated that the price is evaluated only on requested products.

#### Tender 11

This tender is for office supplies. However, inside the document it is also stated that the purchaser wants office supplies and a service solution of the supplies. The purchaser explains that the hospital does not have a centralized storeroom any longer and there are approximately 30 departments that order office supplies. The supplier shall in the proposal describe this service so the physical work of the hospital is minimized. What the hospital is doing is to outsource part of the janitors' work. However, in the contract it is described, as it is the supplies responsibility to encourage "*contract fidelity*" by solving the physical handling of the delivery. This means that the supplies must physically deliver the products to each entity. Here is also a shall demand that the supplies should give suggestions on how statistics can be formulated to be presented every quarter. This tender is different compared to the others since it demands various solutions from the supplier. That can make it more difficult to objectively to qualify the suppliers.

## Tender 12

This tender seems like a simple and ordinary public procurement tenders. This is the only tender where the purchaser states that they can consider free delivery once a month if it is reflected on the price. However, further in the tender is it stated that all deliveries shall be free of charge. It is probably only an oversight. What is peculiar with this tenders is that the process was started in November. The due date of submission was January 10, and the validity of the tender was until March 1. On April 18 the awarding decision was still not taken.

## **5.6 Evaluation of Public Procurement Responses**

Out of the twelve public procurement tenders researched, six procurement protocols were received.<sup>85</sup> Four protocols were not received since the contracting entity had not made the award decision. The other two contracting entities simply did not send me the protocols.<sup>86</sup> After 15 days, I contacted the contracting entities and was promised that the protocols would be send. However, I did not receive them before I finished the research.<sup>87</sup>

In some of the procurement protocol it was stated which company had requested the tender document and which companies had made an actual proposal<sup>88</sup>. I could determine from the protocol I received that 43 companies had requested the public procurement tenders in this research case. Out of these companies nine are considered large companies according to the EU measurement of company size.

As mentioned earlier, four contracting entities had not made a decision at the time I finished the research. The due date for the submission of these particular tenders until I stopped the research varied between 10 to 21 weeks.<sup>89</sup> This can seem like an unusual long time for the contracting entities to come to a decision. In three of the tenders the validity of the proposals had expired so a new procurement process should start again.<sup>90</sup>

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<sup>85</sup> Complete list of the companies is in the appendix

<sup>86</sup> Tender 7 and 8

<sup>87</sup> Research period was between October 1, 2001 until May 17, 2002.

<sup>88</sup> In the appendix there is a table of all the companies and which ones that actual made proposals.

<sup>89</sup> The entire research started October 1, 2001 until May 17, 2002.

<sup>90</sup> Tender 9, 10 and 12

Of the six award contracts that were decided four was awarded to large companies.<sup>91</sup> Two of the contracts were awarded to SME. The large companies made several procurement proposals. 57% of the companies that requested the public procurement document never submitted a procurement proposal. The majority of the companies that did not submit procurement proposals were SME.

### **5.7 Evaluate of the Public Procurement Tenders with Directive 93/36 EEC**

The directive 93/36/EEC is established to coordinate the procedure for the award of public supply contracts. This directive is for the values of contracts that exceeds the threshold of 200 000 ECU. Out of the 12 public procurement tenders examined it is assumed that two contract is over threshold. Four of the tenders do not state the value of the contract. I suppose that the tenders that did not state the value of the contract is under threshold and therefore the EC-directive do not apply. However, Sweden has voluntarily decided that purchases under threshold are included in the Swedish legislation LOU 1992:1528. Therefore the aim of the directive is valid for all 12 public procurement tenders in this research study. The aim in the preamble of the directive states

*“The information contained in these notices must enable suppliers established in the Community to determine whether the proposed contracts are of interest to them, for this purpose it is appropriate to give them adequate information about the goods to supplied and the conditions attached to their supply”<sup>92</sup>*

The statement could be re-phrased like this: The public procurement tenders should be clear and specific so the supplier can make a decision if this is a good piece of business for the company. What makes a public procurement tenders interesting can vary? It can be the possibility to increase the sales volume or it can be the possibility to sell products from the products mix that are slow sellers or it can be the possibility to increase the profit margin on some products. Regardless of the different aspect what makes a tender interesting, it is the

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<sup>91</sup> Tender 2,3,4 and 5

<sup>92</sup> Directive 93/36 EEC O.J L199/1

potential increase or continuation of commerce a new contract will bring. Four of the tenders do not state the value.<sup>93</sup> It is possible to try to calculate the value if it is assumed that it is based on previous year purchases. All tenders had last year's volume of purchases. However, seven of the tenders clearly stated that they do not guarantee any volume and the last year's purchases is only an indication of consumption.<sup>94</sup> None of the tenders stated that there is a guarantee of purchases. However, if assumed that the value of the contract is stated and there is not a statement that avoids guarantees the only two tenders have the information to make them interesting. Therefore, it can be concluded that two out of twelve public procurement tenders are according to the EC-directive.<sup>95</sup>

## **5.8 Evaluate the Public Procurement Tenders with the LOU 1992:1528**

The LOU1992:1528 states in the preamble that the act contains provisions to fulfill the commitments entailed by Sweden's membership of the European Union.<sup>96</sup> In addition, the act contains specific provision that is decided by Swedish legislators. Some of the stipulations are in general terms while other are more detailed. Besides the general paragraphs, the following paragraphs are relevant to the 12 public procurement tenders that were used for this research case. The tenders are compared to the general provision of the legislation and specifically the following paragraphs since it is relevant to these particular tenders and to the SME.

### *LOU 1992:1528 Chapter 1*

*§4 the award of public contracts should take advantage of existing competition and with the conventions of good business practice. No unwarranted considerations should affect the treatment of tenderers, candidates, or tenders.*

Since all the public procurement tenders were advertised on a public accessible Internet site than can be considered to take advantage of the competition.

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<sup>93</sup> Tender 4,6,11 and 12

<sup>94</sup> Tender 1,2,3,4,5,9 and 10

<sup>95</sup> Tender 7 and 8

<sup>96</sup> This text is copied from the unofficial translation on [www.nou.se](http://www.nou.se)



To see if there are unwarranted considerations the demands and requirements were examined. In one tender a list of what kind of insurance the supplier has.<sup>97</sup> In one tender all the demands were shall demands and it is questionable if that is necessary for the purchases.<sup>98</sup> Some of the environmental demands very specific and request actions that is impossible or rather difficult for the supplier to assure.

*§7 a contracting entity shall advertise procurements unless otherwise stated in chapters 2 – 5.*

All tenders were advertised accordingly.

*§11 the entity shall draw up a report on the completed procurement. This report shall contain information about.*

- *The name and address of the entity and the subject and value of the procurement,*
- *The names of tenderers or candidates who qualified to participate in the tendering and the reason for their selection*
- *The names of tenderers or candidates who were unsuccessful and the reason for this,*
- *The name of the supplier who was awarded the contract, the reason why,*

All 12 contracting entities were contacted for the procurement reports. In four of the tenders the decision was not taken and therefore no report could be forwarded.<sup>99</sup> One contracting entity send a e-mail and stated that only one company had made a proposal and that they meet all the demands and therefore was awarded the contract. Therefore it is not possible to decide if a procurement protocol was issued or not.<sup>100</sup> Otherwise the six tenders that were received met this requirement with the above request information included in the protocol.

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<sup>97</sup> Tender 1

<sup>98</sup> Tender 3

<sup>99</sup> Tender 10 and 12

<sup>100</sup> Tender 4

*§16 the contracting entity may refer to a specific brand, manufacture, or origin if there is no other way in which the subject of the procurement can be described with sufficient accuracy or comprehensibility. The wording "or the equivalent" should follow this reference*

All of the contracting entities have submitted previous years purchases as an indication of what they want to purchase in this public procurement. Some of the tenders named the brand of the product while other tenders have the type of product that was requested. The tenders that had the brand name stated made statements with the meaning "equivalent".

*§16c In procurement according to chapter 2 or 5, the contracting entity may only require the information about the supplier lay down in §17 and §18 and that is required in view of the subject of the procurement.*

This is where the contracting entity has the right to request information that is stated in paragraph 17 and 18. All the tenders requested the information.

*§17 the supplier can be excluded if the company is bankrupt or subject to proceedings for bankruptcy. If the company has not fulfilled its obligations for payment to the government. Also if the supplier is convicted of an offence concerning the profession or has been guilty of grave professional misconduct. The supplier can also be excluded if required information is lacking according to this paragraph and §18.*

None of the tenders were excluded because of paragraph 17. However, there were suppliers that were excluded for not meeting the demands according to paragraph 18.<sup>101</sup>

*§18 the contracting entity must indicate what proof is required of the supplier's financial and economic circumstances and his technical capacity and abilities.*

To show proof that the company is not subject for bankruptcy and that financial obligations to the government is fulfilled, the Tax authorities transmit a form called 4820 upon request from

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<sup>101</sup> Tender 3,6 and 11

the supplier. All tenders requested this form to be attached to the proposal. None of the tenders requested proof that the supplier was not convicted of any offence in its profession. To determine capacity and abilities, shall- and ought to demands are requested. The tenders differed in the emphasis on the shall demands. Some tender stated clearly that all shall demands must be met to be eligible for the second qualification phase. These shall demand were underlined or typed in bold font.<sup>102</sup> Those shall demands were put together with ought-to demands. The rest of the tenders only had shall demands. The demands varied considerably between the tenders. A common demand was that the proposal shall contain an environmental declaration or policy. The proposal shall be written in Swedish were demanded in all the tenders. Then there were specific shall demands regarding the delivery time and how the prices were to be presented on paper or diskette.

*§20 in procurement in accordance with chapters 2, 3 or 5 before evaluation the contracting entity shall examine whether the tenderers or candidate fulfill the requirements imposed upon the suppliers.*

It was stated in all procurement protocols if the suppliers had fulfilled the requirements or not. The reasons for not fulfilling the requirements were also stated.

*§22 a contracting entity shall accept either*

- 1. The tender which is economically most advantageous or*
- 2. The tender, which has the lowest, tendered value.*

*In its contracting document or in the contract notice the entity shall state to which considerations weight will be attached. If possible these consideration should be ranked in order of importance with the most important first.*

All the tenders had the most economically advantageous criteria as the standard for the award. There was only one tender that did not specifically state the considerations that would be weighted.<sup>103</sup> Some tenders ranked the list of priorities<sup>104</sup> while it was possible for some to

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<sup>102</sup> Tender 3, 4, 6, 9, and 11

<sup>103</sup> Tender 9

<sup>104</sup> Tender 1, 2, 5, 6, 7, 8, 10, and 12

rank both the order of importance and a numerical value of the weight for the consideration.<sup>105</sup> Some had a list that contained several criteria while other only had two criteria, price and range of assortment. Two tenders did not have the price as first priority instead the tenders had service and qualities as their main precedence.<sup>106</sup> The considerations varied considerably.<sup>107</sup>

*§ 23 an entity may refuse tenders which it considers price abnormally low*

No of the tenders were refused because of a abnormally low price

*LOU 1992:1528 Chapter 2*

*§ 7 a contracting entity shall within 15 days of receipt of such a request furnish information to every candidate or tenderer who so requests about the reason for the rejection of his application or tender. Those whose tenders have been rejected shall if they so request be informed who the contract was awarded to.*

All the contracting entities were contacted for a procurement protocol via e-mail. Four contracting entities were contacted after 15 days by telephone to insure that they had received the request. One contracting entity explained that the contract was not signed and therefore a protocol was not issued.<sup>108</sup> One contracting entity explained that the tender was a collaboration of six municipalities and he did not know which municipality had the procurement protocol.<sup>109</sup> The other two did not have an explanation why they had not send the protocol.<sup>110</sup>

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<sup>105</sup> Tender 3, 4 and 11

<sup>106</sup> Tender 11

<sup>107</sup> A completed list of the priorities for considerations is in the appendix.

<sup>108</sup> Tender 1

<sup>109</sup> Tender 8

<sup>110</sup> Tender 5 and 7

*§13 in open procedure the date of receipt of tenders shall be at least 52 days from the date of dispatch of the contract notice. A contracting entity shall provide contract documents when requested by a supplier within six days.*

All tenders were advertised in a timely matter. In addition, all the requested tenders were received within the time limit.

#### *LOU 1992:1528 Chapter 6*

*§3 neither in the contract documents nor in any other basis for procurement may the contracting entity describe the object of the procurement in any way that can refer to only one certain product or one specific process. An addition it shall be made clear in the contract documents whether a tender can be accepted without preceding negotiations.*

The beginning of the paragraph is the same as §16 in chapter 1, that the tender can be accepted without preceded negotiations. This was stated in all the tenders.

*§5 Tenderers and candidates shall be given reasonable time to submit their tenders. The period for the admission must never be less than 10 days from the date of publication of the invitation to tender.*

All the tenders gave sufficient time to submit proposals.

*§14 when a tender has been accepted the contracting entity shall notify the tenderers as soon as possible. However no later than the expiry of the period for which the tender is binding. Tenderers that have not been accepted shall be notified as soon as possible.*

Of the four tenders I proposed,<sup>111</sup> two of the tenders the award decision was not take at the time of completion of the research. The two tenders were the award decision was taken no notification was forwarded to me.<sup>112</sup> In one of the tenders the date of validity had expired and the contracting entity said that they had not made a decision.<sup>113</sup>

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<sup>111</sup> Tender 1,3,5 an 12

<sup>112</sup> Tender 3 and 5

<sup>113</sup> Tender 12

## 6. The Difference Between Theory and Reality in Public Procurement

### 6.1 Analysis of the Application Directive 93/36/EEC

As point out in section 5,6, in the pre-amble of the directive 93/36/EEC it is states that tenders must contain enough information for the supplier to be able determine if the proposed contract is of interest for them.

*“The information contained in these notices must enable suppliers established in the Community to determine whether the proposed contracts are of interest to them, for this purpose it is appropriate to give them adequate information about the goods to supplied and the conditions attached to their supply”<sup>114</sup>*

It is questionable if a businessperson can make the decision if it is an interesting contract if the value of the contract is not stated. Can a businessperson make a decision if they do not know the amount of sales? Can it be of interest of the businessperson when the purchaser is not willing to give any guarantees for the expected volume? How can you give the best price if you do not know how much you are going to sell?

Subsequently, the different demands that are express as shall and ought-to demands that are difficult to decide the cost to fulfill them. Once a supplier has submitted the proposal, he has accepted the shall demands and all the terms in the proposed contract and must deliver accordingly. Since it can be difficult to determine the impact of these demands, the supplier might have difficulties to decide if the tender is of interest or not.

If these arguments are taken in to consideration then none of the 12 tenders is following the directive. Given that none of them give guarantees for purchased volume that the prices are based on and the demands are so vague that is impossible to determine the cost and therefore difficult to determine if the contract is financially defensible.

This is not only a difficulty for the SME but to all companies. However, the SME might not have as much buffer to absorb a bad piece of business as the larger company. Therefore the decision maker at the SME might instead avoid the contract instead of pursuing the unknown.

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<sup>114</sup> Directive 93/36 EEC O.J L199/1

## 6.2 Analysis of Swedish Legislation LOU 1992:1528

### *LOU 1992:1528 Chapter 1*

*§4 the award of public contracts should take advantage of existing competition and with the conventions of good business practice. No unwarranted considerations should affect the treatment of tenderers, candidates, or tenders.*

This word of the legislation is subjective and can be difficult to determine. What is to take advantage of existing competition? Is it enough to receive only one tender and accept that tender as was done in one of the tenders.<sup>115</sup> What can be more difficult to determine is unwarranted considerations that affect the tenders? There can be demands that the supplier does not find necessary for the purchaser to demand or it can be difficult for the supplier to know why it is necessary for the purchaser. One way is to look at the recurrent demands in the tenders to come to a decision what should be considered warrant to demand.

For instance, the demand for statistical reports. In one of the tender this was a shall demand that would exclude the tenderers if it was not fulfilled. Most of the tenders requested statistical reports once a year, but there were tenders that requested reports quarterly or whenever demanded. It can be questionable if that is warrant for consideration for a purchase. However, since the demand is in most tenders it can become accepted as a necessity to consider. Some unwarranted considerations that a supplier can question are the relevance of environmental demands. Two of the tenders have environmental request that could be considered out of proportion and complicated for the supplier to ensure.<sup>116</sup> Overall the contracting entity does not seem to have adjusted the tenders to suit the requested products. The public procurement tenders seems to be general and the demands are the same regardless of what kind of goods that is being purchased.

Here is a difference that can influence the SME. Large company tend to have the better financial and human resources. Then it is not as risky to guarantee demands such as provide sell support whenever needed or not be able to increase prices in a unexpected cost increases.

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<sup>115</sup> Tender 4

<sup>116</sup> Tender 4 and 7

The larger companies have of course also better resource to develop e-commerce business and to obtain quality certifications such as ISO.

*§7 a contracting entity shall advertise procurements unless otherwise stated in chapters 2 – 5.*

All the tenders in this research case were advertised in a timely manner. This can have to do with that these products are consumables and therefore it is a recurring public procurement.

*§11 the entity shall draw up a report on the completed procurement. This report shall be submitted to the European Commission should it so request. This report shall contain information about.*

- 1. The name and address of the entity and the subject and value of the procurement,*
- 2. The names of tenderers or candidates who qualified to participate in the tendering and the reason for their selection*
- 3. The names of tenderers or candidates who were unsuccessful and the reason for this,*
- 4. The name of the supplier who was awarded the contract, the reason why,*

Just as the tenders varied in the design and layout the procurement protocol varied. However, all the information above was included. In one of the tenders where the value of the contract was not stated, but it was stated in the procurement protocol.

*§16 the contracting entity may refer to a specific brand, manufacture, or origin if there is no other way in which the subject of the procurement can be described with sufficient accuracy or comprehensibility. The wording "or the equivalent" should follow this reference*

All the contracting entities had submitted previous years purchases as an indication of what they wanted to buy. Some of the tenders indicated that this was a base or general assortment



and the tenderers should forward complete assortment. Here is where the competition can be distorted. A supplier with a wide assortment can offer the requested products at a very low price or even below cost to get the public procurement contract. Once the supplier is awarded the contract and becomes the official supplier, he can sell the whole assortment to the contracting entity. This is a way to make up for the low prices offered at the public procurement tender. This is an advantage for the supplier with the largest assortment, which in most cases are the large companies.

*§16c In procurement according to chapter 2 or 5, the contracting entity may only require the information about the supplier lay down in §17 and §18 and that is required in view of the subject of the procurement.*

Here is another area where the wording leaves room for a wide interpretation. The wording “*required in view of the subject of the procurement*” can be translated differently. In paragraph 17 it is specific what can be requested but paragraph 18 leaves room for many translations.

*§17 the supplier can be excluded if the company is bankrupt or subject to proceedings for bankruptcy. If the company has not fulfilled its obligations for payment to the government. Also if the supplier is convicted of an offence concerning the profession or has been guilty of grave professional misconduct. The supplier can also be excluded if required information is lacking according to this paragraph and §18.*

It is easy to determine if the company has fulfilled its financial obligations to the government since the form 4820 assures there are no outstanding debts. It was emphasized in some of the tenders that self-assuring documents were not accepted while there were tenders where the General Manager had to sign a warranty that the company was not in financial difficulties. To ensure that the supplier is not convicted for breach concerning the profession and is guilty of professional misconduct an excerpt from the criminal register could be requested. None of the contracting entities requested this, but there was statement indicating that if it became know

that the supplier was convicted of such offence the contract could be cancelled. This is a request that is identical for both the large company and SME.

*§18 the contracting entity must indicate what proof is required of the supplier's financial and economic circumstances and his technical capacity and abilities.*

Here the contracting entity can demand proof or description to be able to determine if the supplier has the skills and ability to deliver requested products. The different verifications spread from asking the supplier to describe the history of the company until to demand that the company had delivered to same type of customer. Even in this area the procurement documents seems to be written in general terms to suit as many as possible different purchases and the documents are not adjusted for the particular products that are being purchased. Here the purchaser could ask himself what capacity and abilities are realistically needed for this purchase.

*§20 in procurement in accordance with chapters 2,3 or 5 before evaluation the contracting entity shall examine whether the tenderers or candidate fulfill the requirements imposed upon the suppliers.*

According to the procurement protocol that was received this requirement was fulfilled.

*§22 a contracting entity shall accept either*

- 1. The tender which is economically most advantageous or*
- 2. The tender, which has the lowest, tendered value.*

Obviously, the purchaser must have room to make decision based on other considerations than price. However, when the provision is not followed to state the order of priority the decision can seem arbitrary. This is a provision that can affect large companies and SME alike.

*§ 23 an entity may refuse tenders which it considers abnormally low*

As mentioned earlier there can be possibilities to offer low prices on the requested products to get the contract and recover the loss by selling additional products that were not stated in the public procurement document. In one of the tenders the offering price differed 26% between highest and lowest tender. That could be an indication that the tender is abnormally low.

This provision can both be beneficial and destructive to the SME. It can be to an advantage since SME tends to have less overhead cost, and can therefore set prices that are very low compared to the large company. It can be a disadvantage since large companies tend to be able to dump prices easier than SME.

*LOU 1992:1528 Chapter 2*

*§ 7 a contracting entity shall within 15 days of receipt of such a request furnish information to every candidate or tenderer who so requests about the reason for the rejection of his application or tender. Those whose tenders have been rejected shall if they so request be informed whom the contract was awarded to.*

Here the participating companies have the right to get the information if they were awarded the contract or if not, who did. However, this is only after the decision has been taken. Moreover, the decision times varies great in length. Not knowing if a piece of business is coming in or not is can be of a dilemma. Most business want to know the expected business volume so they can predict need of cash flow, capital needed for purchase, if the stock volume has to increase or if the personal requirement will increase because of the expected increase in sales volume. The difference between the large and the SME is that the smaller company might need more time to be able to handle a large volume and therefore is more sensitive to receive the decision as soon as possible.

*LOU 1992:1528 Chapter 6*

*§2 in a simplified procedure the contracting entity shall request tenders by means of a notice in an electronic database that is open to the public or some other form of notification that can ensure effective competition.*

TED is available free of charge on the Internet but only the public procurement over threshold has to be published. To get extensive information efficiently of public procurement tenders in progress under threshold in Sweden and the EU, the supplier is forced to subscribe to get access to electronic database or receive paper with the public procurement ads. Most probably the public procurement tenders that are under threshold are the ones that are most interesting for the SME and those are not free of charge.

*§3 neither in the contract documents nor in any other basis for procurement may the contracting entity describe the object of the procurement in any way that can refer to only one certain product or one specific process. An addition it shall be made clear in the contract documents whether a tender can be accepted without preceding negotiations.*

Not being able to negotiate can make the purchase more expensive. The supplier is the expert in the field and can suggest solutions that are cost efficient and beneficial for the customer. However, without the possibility for negotiations the supplier can not present alternative products that can better suit the customer. Large companies might have more rigid structure of their organisations so there is not as much room for negotiation as the SME can offer. This provision that does not allow negotiation is more to a disadvantage for the SME than for the large company.

### **6.3 Analysis of the Tenders**

In the above paragraphs, the content in the tenders has been evaluated against the legislation. Now the discussion will be in the perspective of a businessperson in a SME.

The relevance of the shall- and ought to demands compared to the requested products can seem far-fetched. The timeliness works when it comes to submit the contract and there are precise dates when the proposal must be submitted, but the time to make decision and respond to the supplier takes too long. As a businessperson, I would like to know when I will get a decision to be able to plan and prepare accordingly. Also it can feel meaningless to submit

proposals when the contracting entity take so long to make the award decision that the validity of the proposals expires and the process must start from the beginning again.

In addition, the pricing strategy can seem out-dated. These particular products price can fluctuate plenty in cost and to set prices for long periods of time can be too risky. What is becoming common today is to give a certain mark-up on cost instead of giving rebates. The purchaser also demands service and support to be included in the price. When the supplier does not know how much of the demands the purchaser will request, the supplier will of course set prices to cover all possible events that can be demanded. This is where the purchaser really can end up paying for service that is not being utilized. At the same time the financial resources from the taxpayers are misused.

Some of the tenders seems to be careless written and with disproportionate demands and unrealistic demands. The tenders are long and complicated to read and to interpret and can at a first glance seem intimidating. The actual contract is submitted with the words that when you send a proposal, you agree to all provisions in the contract. As the demands becomes more difficult and at the same time unrealistic for the SME to guarantee, the public procurement process can lose credibility. What I consider the most negative for the businessperson is that there is no room for communication since the negotiation opportunity is removed. Negotiation does not have to be about price. It can be one way to find new solutions and products that can be beneficial for the purchaser and assurance customer satisfaction.

#### **6.4 Analysis of SME and Public Procurement**

In paragraph 1.2 the description of a SME was presented with its unique features in the business world. The developments of a SME are when the business starts locally and grows and expands into new geographical areas gradually. SME usually have their customer on a close proximity. When looking geographically of the tenders examined in this research case, the contracting entities were spread through out the country with 1350 km between the most

southern contracting entity to the most northern contracting entity.<sup>117</sup> According to the performance patterns of SME it is not of interest to pursue contracts that are far from the home office. Especially when there are demands in the contract that the supplier must come and make personal appearance if the purchaser so desire.

If the SME obtain and maintain customers from networks and personal contacts then the format of public procurement tenders with its request for objectivity can not realistically be of interest for the smaller companies. When the small business owner is the characteristics and guarantee for quality then the request for qualification certification and description of quality performance polices can seems pointless and bureaucratic for the SME.

When it is assumed that SME enterprises want to grow and point to the public procurement market as an excellent market to pursue, that goes against several of the characteristics of the SME. As mentioned earlier in paragraph 1.2, the myth of the energetic entrepreneur that is constant striving for growth is not accurate for the majority of SME. If a smaller company gets a public procurement contract that is a large contract that the company handles and that contract creates a tremendous increase in the sales volume, difficulties can arise. The need to obtain additional capital for purchases is one dilemma that can be more difficult for the SME to handle than for a large company. The demands on the entire organisations can increase as the sales volume increase and with the demands that was required in the tender. Additional personal might have to be added for new functions or to support intensified business. As the company becomes large, the workload is heavier and more complex. As the tenders do not give any guarantees and frame contracts are common, uncertainty and insecurity is generate. SME can prevent these risks by avoiding public contracts.

The SME and entrepreneurs behaviour is related to risk and therefore some threats are always part of commerce. However, when the risks are small but several then another angles can be considered. The SME can ask how many risks is it worth for the company to take to enter the public procurement market? How much time and effort in time and personal resources is acceptable or how much endeavour can the company withstand to get a public procurement contract? When the risks are several, a negative synergy can be generated so that the company

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<sup>117</sup> Ängelholm's Hospital and the Storumans municipality

is losing instead of gaining advantages by participating in the public procurement market. When it comes to the public procurement process it can be summarized that it is not one specific problem but several small ones that can create hinder.

### **6.5 Analysis of Public Procurement Process as a Sales Process**

In the beginning of the paper my own sales experience was described. Since public procurement is not only a measurement to create economic prosperity, enforce competitive sales and efficient pricing but also a distinct sales process. A regular sale process can be illustrated quite simple where most sales people would recognize the description.

1. Promote your product

To promote products, advertisement through media or send direct mail are common methods to let the customer know that the company exist and what kind of products are offered. This is also a way to let the customer know that there is a need or desire for your product.

2. Find a lead that could bring a potential customer

To find customers, advertisement in a magazine where the reader fits the description of the common customer that uses the product can be one way. Another way is to contact companies and organizations that are known to use the product.

3. Pitch your product by emphasis on quality of the product or creative solutions for the customer

To pitch your product, a price campaign can be to initiate or to create interest. A personal visit to the potential customer to demonstrate the product is another way to propose the product.

4. Turn the potential customer into a definitive customer by a commitment that the customer will buy from you. Close the deal with help of negotiate so both the buyer and supplier is a winner.

To reach to the moment where the customer is interested in signing a contract some compromise can have been made from both sides. This is where the sales person can add some extras to make the customer feel like they get great value for the purchases. The buyer can forgo some redundant demands to get a better price.

5. The sales process is a success!

What is the most important part of this process is that both parties feel that the agreement will benefit them both. The successful sales can then lead to further business either through new products or by continuation of the contract.

The public procurement process does not have much in common with the described sales process above. A company can not promote and inform contracting authorities that they exist or that there products are superior or offer any other solutions. To find leads the supplier can only wait for the public procurement document to be advertised. There is not much room to pitch the products and offer resourceful solutions since it is the contracting entity that decides the format of the public procurement document and the supplier risk to be disqualified if they abandon the layout of the document. Since the process is designed that only one party can make demands and no compromises are allowed, the chances that both parties can be satisfied can be diminutive. If SME follows what can be called the regular sales process then the public procurement can seem like a process where probability for lucrative terms can be limited.



## **7. Closing Remarks of the Public Procurement Process**

### **7.1 Conclusion and Reflection on Directive 93/36/EEG and LOU 1992:1528**

To establish their objectives, states and politicians have widespread power through the legislation. Laws and regulations shall be written in such way that the legislation can withstand change of time and circumstances. That can be one reason why legislation is written in such way where plenty of room is left for interpretation. However, the content is both vague and precise in the directive and provision concerning public procurement. The EC-directive and the Swedish legislation are written in vague formulations that can be expanded in the demands of privileges and obligation. To obtain information so the supplier is able to determine if the tender is of interest is a vague formulation in the EC-directive. Here it could be possible to more precisely state what kind of information that should be stated. There could be other measurement taken to encourage SME to participate in the public procurement process. Legislator could simply search in economic handbooks or strategy literature of what makes a contract interesting. Especially if the decision makers want the SME to participate in public procurement, the way of conducting business characterised of SME should be taken into account.

In the Swedish legislation the provision that no unwarranted considerations should affect the treatment of tenderers and tenders opens an array of demands. The suppliers can become a Jack-of –all trades to fulfil the possible considerations that it is possible for the purchaser to request. The supplier can be asked to offer the lowest price, the greatest service, have extensive legal and general economic knowledge. Moreover, the suppliers should also defend, support and develop environmental demands both within their own organisation and their sub-contractors. Ultimately, the supplier should be active in the community and participate and contribute to social reform. Here the contracting entity should question the proportion of how much they can demand and how much they should demand. If the public procurement process shall satisfied the request of using tax money in the most efficient way SME should only have to sell products and act like purveyors.

## 7.2 Conclusion on Public Procurement Process

As stated in the beginning of the paper the public procurement process was harmonized through out EU to help the creation of the internal market by erase hinder and to encourage cross border trade. The force of competition between companies is to create efficiency and renewal for the economic development. The competition among the companies forces them to continuously to excel and continuously give a flow of new and improved products. The SME has a significant part in this process. In the macro economic perspective it is important that total representation SME is vigorously and dynamic.<sup>118</sup> The importance of SME on the macro economic has recently been of interest for scholars, politicians and decision makers. Growth has been considered as a central topic since growth in SME can be regarded as continuous development.<sup>119</sup> Under the last decades society has in different way try to stimulate and develop entrepreneurs. This has been seen as measures to correct increasing unemployment and stagnated economy. How these measures have been formed has depended on the politicians' and decision-makers adoption of economy schooling.<sup>120</sup>

The public procurement process can statue as an example where politicians and decision-makers have come to a conclusion that there is a segment in the economic marketplace that can facilitate improvement and development for the macro economy, but not much attention has been paid to the participants. It is established that it is important to demolish trade hinder, create fair competition and provide encouragement to SME for the success for public procurement as being a part of the development of the European economic market as a whole. What can be left for the politicians and the decision-makers to do is to focus on to the details and change the process to better suit the SME and how the SME conduct business.

There are proposed changes in the legislation that will benefit the SME. The value of direct procurement is suggested to increase which will give the purchaser the possibility to approach a supplier directly without advertisement. Also suggestions to make it easier to appeal the decisions will benefit all suppliers including SME.<sup>121</sup> These kinds of adjustments and changes

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<sup>118</sup> Johannisson, Bengt & Lindmark, Leif *Företag, Företagare, Företagsamhet*, Studentlitteratur 1996,

<sup>119</sup> Landström, Hans, *Entreprenörskapets rötter*, Studentlitteratur 1999, p 84

<sup>120</sup> Ibid. p55

<sup>121</sup> Norinder, H, *Nya villkor för offentlig upphandling EU i blickpunkten – Företagsnyheter från EU*, No 2, 2002

will probably be needed to encourage and persuade SME to participate in the public procurement market.

### **7.3 Conclusion on Public Procurement as a Driving Force**

After researched tenders and examined the legislation in the attempt to understand how the process works and understand difficulties SME can encounter, the hinders are not obvious. The conditions and prerequisites for SME and large company are the same. By setting the public procurement process in the perspective of macro economic interest, I can conclude, it can be a brilliant idea to use an old historic process as the public procurement to construct a new economic area as the EU. However, after examination of the entire process there are issues that can probably make that the SME's not interested in the public procurement market. To lure that growth of companies will lead to success is not astute. Growing companies often are associated with success, which is associated with prosperity and profitability. However, it is not naturally that growth will give profit. The search for growth company as winner is in vain since there are no evident links between growth and prosperity.<sup>122</sup> Therefore the urge that participation of SME will bring prosperity both to the companies, the nation and EU is not convincing. It can be the public procurement process that is better suited for the large companies that can make create hinders for the SME.

### **7.4 Conclusion on the Public Procurement and SME**

By just researching twelve bids it can be concluded that there are problems with the process. Out of twelve tenders, 30% had not come to an award decision after several months had passed the due date of submission. Then keep in mind that these tenders required uncomplicated, readily available and similar products that have been purchased previously and the products are needed on a daily base. One can only speculate how long the public procurement process would take if the products were complex and of technical character and the purchaser was not used to buy such products. Also it can be interpret that there is an

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<sup>122</sup> Johannisson, Bengt & Lindmark, Leif *Företag, Företagare, Företagsamhet*, Studentlitteratur 1996, p 73

interest to participate since many companies request the public procurement document. However, the actual proposal, especially from the smaller companies, is modest. This can be an indication for the purchaser that they need to reflect on their formation and demands in their tenders.

The opportunity the legislation gives the contracting authorizes to set demands should be seriously taken and not exaggerated. Question that can be asked is if it is wise to demand SME to police the enforcement of the environmental legislation. Is it the SME responsibility to solve the unemployment rates by setting a stipulations that public procurement contract can be given to the company that hire long-term unemployed persons. Tenders are poorly written with specifications requirement that are used for several products without adjustments for the specific products. The language in some of the tenders is difficult since abbreviations for commercial conceptions are used to communicate the terms. The public procurement contract is long and can take long time to read and to understand. The suppliers can not construct a template to use for all public procurement proposals since the demands differ in every tender. All the above is of course issues the supplier can be confronted by in all other business. However, if politicians and other decision-makers want to encourage SME to participate in the public procurement market, the process needs to change to resemble more the approach that SME conducts business. Also, emphasis on making the tenders easier to read and understand and respond to would probably encourage more SME to pursue the public procurement market.

To search, select and answer public procurement does take some effort and time. Just as the National Board of Trade claims that one important reason why companies do not pursue the public procurement market is the lack of knowledge.<sup>123</sup> Maybe the assumption that SME do not have the required knowledge to enter the public procurement market is correct. However, it could be more efficient to change the public procurement process, then try to train and educate the 18 million SME that exist in the EU.

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<sup>123</sup> Kommerskollegium National Board of Trade *Gränslösa affärer* 2000, p 4

What could be a danger is that no one wants to sell to contracting authorities since it is not worth the effort. It should be remembered that SME differ compared to large company in what they want to do and what they can do based on the behavior pattern and how the market place is constructed.

### **7.5 Reflection of the Method and Result**

I chose the perspective of SME and one particular market segment and the empirical findings were limited to twelve tenders. If the perspective had been from the purchasers viewpoint the approach to the problem and the outcome would probably be different. The outcome could be different if more tenders for a longer period of time were examined. Also, the conclusion could be different if another market segment was researched. There could also be differences if service instead of supplies was used. The research was conducted as a case study and that too could have influenced the outcome. I chose to look at the actual tenders and compare them with the legislation. Additionally, I compared the public procurement process with the theory of how SME conduct business. If the contracting entities and participating companies had been interviewed and asked how they interpret the legislation and how they perceived the public procurement process the result of the difficulties SME can encounter could have been different.

What surprised me and what I learned from this work is that there is a distinct difference in the behavior between SME and large companies. I knew that there are of course differences between SME and large companies but I did not understand the significance and the impact of the differences. I also came to the understanding that this is a complex problem and to suit the three interest groups (The contracting authority, the businessperson and the taxpayer) multifaceted solution will have to be created.

## 7.6 Contributions of the Research

I would like with this paper contribute to the discussion why SME are not participating as much as there present in the macro economic. The Swedish board for Commerce states that the main reason why companies with excellent prerequisites do not take advantage of the public procurement market is lack of knowledge.<sup>124</sup> I hope by looking closely at the public procurement process and discuss the various dilemmas and the difficulties SME can encounter, an understanding that new efforts must be taken in several different areas to support the SME in the public procurement market. Also the understanding of the different behavior patterns between SME and large company must be taken serious. Ultimately this new dimension why SME are not as active on the public procurement market can lead to a change in the aim of encouragement.

## 7.7 Future studies

The area of public procurement can be looked upon has it has three interested parties, the contracting authority, the businessperson and the taxpayer. Therefore there can be three different angles on the predicament how to utilize the public procurement to get the best advantages so it works for the individual that comes in contact with the process. Also, how the process can benefit us as a nation and the EU as an economic entity. In this area where I concentrated on was in the perspective as a business person affiliated with a SME. Many more positions can be researched. How many SME have entered the public procurement market once and then deliberately avoided the market. How many SME have faced bankruptcy or seriously damage the performance of the company after a public procurement contract. Those questions can deepened the understanding why SME do not participate in the public procurement market. Is it possible to build relation with a contracting entity and how often do the contracting entity change the supplier. These questions can be researched in the perspective of strategy and sustainability of the business.

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<sup>124</sup> Kommerskollegium National Board of Trade *Gränslösa affärer 2000* p. 4

In the perspective of the contracting authorities and purchaser many questions can be raised. Does the contracting entity prefer large companies versus SME? Is the legislation too rigid for the purchaser to be creative? Does the cost that the public procurement entails provide lower prices and better service? From the point of view of the persons that works with public procurement it could be interesting to know if this kind of sales process is appreciated and welcomed. Is the public procurement process a proficient tool to conduct purchases? For the taxpayer it can be researched if this process is beneficial for the society. Does public procurement actually create cross-border trade and how much impact on the macro economy does public procurement really have. What could happen if the public procurement process was abolished? The different perspectives are non-exhaustive.

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## 9. Abbreviations

ALSO 81	Allmänna bestämmelser för Leverans av gods till den Offentliga Sektorn
CPV	Common Procurement Vocabulary
EC	European Community
EDI	Electronic Document Interchange
EEA	European Economic Agreement
EEC	European Economic Community
EFTA	European Free Trade Association
EU	European Union
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
LOU	the Swedish Law on Public Procurement (Lagen om Offentlig Upphandling)
NOU	the Swedish National Board for Public Procurement (Nämnden)
OJ	Official Journal
SAF	Svenska Arbetsgivar Föreningen
SFIT	Single Face to Industry
SME	Small and Medium Enterprises
TED	Tenders Electronic Daily
TEU	Treaty of European Union
WTO	World Trade Organization

## **10. Appendix**