

What rules apply to procurement and ordering at
Aarhus University?

You can read about the background and much more
- in this little pamphlet

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Aarhus University cannot independently determine the rules for procurement at public institutions. These are set out in

the EU Directive on Public Procurement in combination with
the university's procurement policy,

which is governed by the Remedies Directive.

The main principle is that all procurement for public institutions should be exposed to competition to ensure better prices and increased efficiency. In addition, all suppliers should be treated equally to prevent procurement on the basis of personal relations, preferences, corruption and nepotism.

The EU has laid down a compulsory set of rules regarding procurement and tender obligations for public institutions

The Danish Ministry of Finance describes the Act on the Procurement of Public Institutions as follows:

“Public institutions within the state, regions and municipalities are obliged to purchase goods and services by carrying out an EU tender process if the amount exceeds a specified limit over four years”.

Unlike private companies, public institutions **cannot freely purchase** products and services from the suppliers they prefer to deal with.

It is the buyer – the person placing the order – who has to document that the Act has been complied with and the buyer is therefore also the person responsible.

The public sector – Aarhus University – is a dream customer

In 2011, the public sector market in Denmark amounted to DKK 300 billion.

In 2011, Aarhus University's purchases will amount to approximately DKK 1.9 billion.

The public sector market is growing.

We pay our bills.

We do not suspend payments or become insolvent.

An extract from the rector's memorandum of 23 April 2007 reads as follows:

"It is hereby pointed out that tender regulations and other provisions in the university's procurement policy must be complied with so that purchases are only made from approved suppliers in accordance with the conditions agreed on by the university."

All purchases made by Aarhus University are subject to the procurement policy, whether relating to goods, supplies or services, and whether purchased in Denmark or abroad. The procurement policy applies to all entities at Aarhus University – the joint university functions, faculties, departments, sections, centres, activities and projects – regardless of whether the purchases are financed by ordinary university funds or external funds.

Purchases by Aarhus University within all categories are generally always so large that the university has to go through a tender process.

If in doubt, please contact the AU Procurement Office, which can investigate and determine whether Aarhus University is exempt from the tender process in a particular area.

The Remedies Act (*Kontrolloven*) – on legal and illegal procurement – effective July 2010

This Act enables the authorities to **rescind agreements and deals and impose fines** if a tender process was not undertaken in cases where Aarhus University was obliged to do so. When an employee at Aarhus University uses external funds or Aarhus University funds for procurement, it must take place within the framework of existing agreements or as part of a tender process.

It is the buyer – the person placing the order – who has to document that the Act has been complied with.

The most severe breach of the tender provisions is to directly allocate (order) a delivery or purchase goods without a tender process – in cases where there is an obligation to do so.

There is no reason to be **particularly** surprised that you are not allowed to cross at a **red light**.

One-off purchases – watch out – take care!

It is the buyer who is responsible for proving that it is a one-off purchase, and it is the buyer who can trigger a complaint through his/her behaviour resulting in a fine, the cancellation of a contract, or payment of compensation.

Whether a purchase is a one-off, or a framework agreement is being circumvented, the purchase including information about the type of equipment, model number, supplier and price must be reported to the EU's database for such special purchases.

The auditors must conduct random testing.

It is the duty and responsibility of Aarhus University and thereby of every buyer to determine and document any cases not covered by the tender obligation.

Is it correct that SKI has terminated all its agreements and that you can now purchase what you want and where you want???

NO, that is not correct at all.

Some of SKI's agreements have been terminated and a few will not be renewed.

When SKI terminates an agreement, it does **not** imply that Aarhus University – at the same time or for that reason – can **apply new/different rules for ordering and purchasing**.

Aarhus University still has a DUTY TO USE A TENDER PROCESS and **the buyers HAVE A DUTY to only place orders under agreements that have been subject to an EU tender process**, i.e. either under Aarhus University's own agreements or under FM (Ministry of Finance) or SKI agreements.

It is **the buyer employed at Aarhus University who is responsible for complying with Aarhus University's procurement policy and the government's rules on procurement by public institutions**.

Instead of the agreements that SKI has terminated in the area of research and laboratory work, **Aarhus University now has its own agreements, which MUST BE USED**, and which are tailored to the needs of Aarhus University's users.

Forms justifying purchases are **ONLY** used if a procurement agreement **IS** in place, which the buyer – for factual and objective reasons – chooses not to use. **Reasons** are provided, **but no approval is received** for this justification.

If you experience as a user that there is no agreement for particular goods, that agreements are difficult to use in practice, that the best supplier is not included in the agreement, or similar, **please contact** the local procurement coordinator or the AU Procurement Office. The information will be used in future in connection with new tender documents.

If in doubt, please contact the AU Procurement Office, which can investigate and determine whether Aarhus University is exempt from the tender process in a particular area.

EU tender process = call for offers

An EU tender process is the same as a call for offers, i.e. a winner is determined – a supplier A.

If two other suppliers – B and C – are also nominated, this is often done to ensure the reliability of supply. **The buyer can never freely choose between suppliers in cases where more than one supplier is listed.**

In future, there will be more EU tender processes and agreements at Aarhus University, which will provide opportunities for:

- better meeting Aarhus University's needs
- better prices for Aarhus University
- relevant suppliers for Aarhus University
- increased standardisation
- increased digitisation

PLEASE REMEMBER that **Aarhus University tender processes** do not take place in order to establish agreements for having or purchasing suppliers, but to purchase the goods or services that meet **the needs of Aarhus University.**

Framework agreements are concluded by the AU Procurement Office while mini-tenders can be handled by the local entity.

Tender costs – in areas where there are no SKI agreements – are covered by the AU Procurement Office.

The costs of mini-tenders are covered by the entity in question.

Supplier deadlines

All suppliers undertake not to try to coerce employees at Aarhus University to carry out purchases outside an agreement entered into with the AU Procurement Office, or to accept sales at the request of a person employed at Aarhus University.

If a supplier is encouraged or requested to carry out such a sale circumventing existing agreements, the supplier must apply for written approval of the sale from the AU Procurement Office.

Agreements for the sale of products from the supplier to employees at Aarhus University that do not comply with the **terms** of an existing agreement **or that have not been approved by the AU Procurement Office are invalid.**

Goods purchased on particularly favourable conditions – according to the supplier

Goods purchased on particularly favourable conditions can only be used within the framework of the Supply Act.

Particularly favourable offers in connection with insolvencies and business closures

This possibility only exists in connection with the purchase of goods and can only take place in connection with the final closure of a business or a sale by order of the court. It never applies in connection with the purchase of companies or the sale of companies.

It is therefore not possible for a supplier to offer Aarhus University a particularly favourable deal under the company's usual name.

If a supplier offers a particularly favourable price – according to the information provided by the supplier – this supplier can probably make a favourable/competitive offer in connection with a tender process instead. Particularly favourable offers are also subject to a tender process.

Particularly favourable offers must be compared with current market prices and not the supplier's indicated list price.

Commodity exchange purchases

Goods can only be purchased at a commodity exchange if the commodity exchange in question is a recognised way of determining the price for a particular product and provided the product is actually purchased via the exchange.

Additional purchases/options

The Public Procurement Directive provides limited opportunity for making additional purchases under **an existing public contract without going through a tender process**.

This option can only be used if it is foreseen and stated in the tender documents that it may become necessary to extend the scope of the contract.

It is a condition that the original contract was awarded on the basis of a Public Tender or a Limited Public Tender.

The new contract – the extension – can only be awarded to the supplier that was awarded the original contract.

The extension must comply with a basic project, which is a limitation in its own right.

The negotiations for the new contract must commence no later than three years from the date the original contract was entered into.

Public tender with closed or open framework agreements

The Public Procurement Directive offers the buyer two alternatives for entering into framework agreements with several suppliers:

According to the first alternative, Aarhus University has entered into agreements with several suppliers who have been listed in order of priority. When an order is placed under such an agreement, everything has to be purchased from the first supplier on the list unless the supplier confirms in writing that the company does not sell the product or is unable to supply.

Under the second alternative, Aarhus University has also entered into an agreement with several suppliers but, in this case, the suppliers are on an equal footing. Only some of the terms of the agreement are fixed. Other details of an order such as the description of the article, the quantity to be purchased, etc. must be specified by the buyer.

These descriptions (terms) are subsequently sent by e-mail to all suppliers listed in the agreement, who then have approximately one week to quote a price in competition with the other listed suppliers. This process is called a mini-tender.

The supplier who wins this mini-tender is awarded the order for delivery to the buyer at Aarhus University.

A limited public tender consists of:

An introductory phase in which suppliers are selected and approved, who in **a subsequent phase** can submit tenders to compete for approval as an Aarhus University supplier under a framework agreement with Aarhus University.

The suppliers listed in Aarhus University's framework agreement as suppliers who can submit tenders in EU tender processes or EU mini-tenders are contacted when Aarhus University wants to buy or procure specific amounts of goods or services.

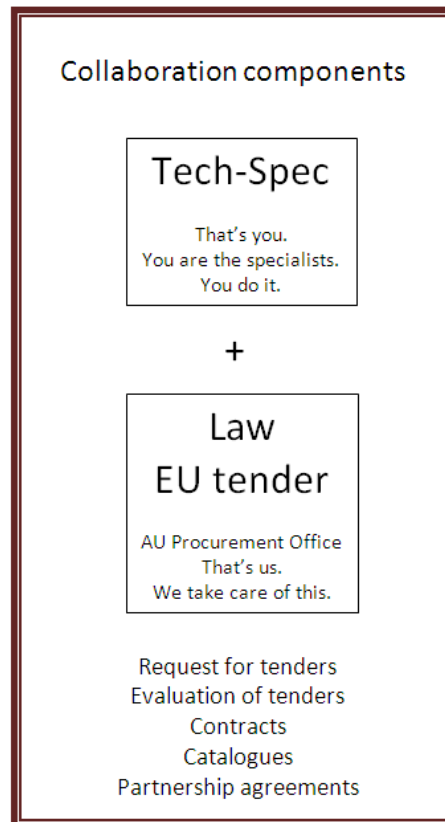
In the introductory phase, the suppliers are contacted either directly or indirectly via the public announcement of a limited tender. In this phase, Aarhus University describes the qualities and competences a supplier must possess.

In the subsequent phase, Aarhus University selects the suppliers from which the university would like to receive tenders in connection with an EU tender process for specific goods, supplies or services.

The suppliers who are not selected as potential tenderers cannot subsequently sell or offer goods or services to Aarhus University within the category of purchases or supplies covered by the agreement.

The above-mentioned two forms of tenders are the most common tender processes used by the AU Procurement Office.

The following is the model for collaboration used when Aarhus University prepares a tender process.



Leasing

The rector's memorandum states as follows:

“Several leasing agreements have also been found that are not only less than ideal from a financial point of view, but also fail in some cases to comply with government rules for entering into such agreements. As such agreements are unsuitable from a financial point of view, entering into such agreements is no longer permitted without prior consultation with the Accounting Office, which makes a recommendation stating reasons to the University Director if relevant.”

It is therefore not possible to enter into leasing agreements. This means that if a black and white photocopier is replaced by another black and white or colour copier or vice versa, it is necessary to use the current agreement between Aarhus University and the current supplier – Konica Minolta.

If a copier or other piece of equipment or appliance is used for a short-term project – for example three to six months – it may make sense to lease it.

Under all circumstances, a draft for a leasing agreement **must** be submitted to the AU Procurement Office, which then analyses the offer and passes it on to the Accounting Office. This is followed by the procedure mentioned above in the letter from the rector.