

Proclaimed by  
The President of the Republic  
Resolution no 100 of 13 February 2007

## **ESTONIAN PUBLIC PROCUREMENT ACT<sup>1</sup>**

Passed 24 January 2007

### **Chapter 1**

#### **GENERAL PROVISIONS**

##### **§ 1. Objective**

The objective of this act is to ensure the transparent, purposeful and economical use of financial resources of the contracting authority, the equal treatment of the participants and effective use of existing competition in public procurements.

##### **§ 2. Scope of application of the act**

(1) This act provides for the public procurement procedures, the rights and obligations of subjects involved in public procurement and their liability for violation of this act, and the procedure for the exercise of state supervision and the settlement of appeals.

(2) For the purposes of this act, “public procurement” means purchasing of goods, contracting for provision of services, organising design contests, contracting for public works and granting of works and service concessions by the contracting authority and contracting for works by the concessionaire of works concession.

##### **§ 3. General principles of public procurement**

The contracting authority is obliged to comply with the following principles in organising public procurements:

- 1) The contracting authority should use financial resources economically and expediently and achieve the objective of the public procurement with the reasonable price by ensuring the best price and quality ratio by comparing different tenders in case of existing competition;

- 2) The contracting authority should guarantee the transparency and verifiability of the public procurement;
- 3) The contracting authority should treat all persons whose place of residence or location is in Estonia, in some other Member State of the European Union, in other state which is a contracting party to the EEA Agreement or in the country having joined the WTO Agreement on Government Procurement (GPA), equally and non-discriminatorily and follow that setting the restrictions and criteria for all persons comply with the proportionality, relevance and justification principles in relation to the object of the public procurement;
- 4) The contracting authority should ensure effective use of the existing competition in public procurements, whereas the participation of the legal person governed by public law or the person governed by private law using the public means in the public procurement should not distort competition due to its use of public means;
- 5) The contracting authority should avoid the conflict of interests distorting the competition;
- 6) If possible, the contracting authority should prefer environmentally safe solutions.

#### **§ 4. Public contract**

- (1) For the purposes of this act, “public contract” means a contract with mutual material obligations awarded between one or several contracting authorities and one or several persons as a result of the public procurement, the object of which are, services or public works. The provisions stipulated on the type of the relevant contract are applied to the procurement contract in the legal acts.
- (2) The public contract may be awarded by the contracting authority only in the terms and conditions stipulated in this act. The non-compliance with the requirements stipulated in the act has no impact on the validity of the public contract, if not stipulated otherwise in this act.
- (3) The public works contract includes contracting for:
  - 1) Execution of any public works mentioned in annex 1 of this act or both execution and the design of public works;

- 2) Construction of the building or construction and the design or
- 3) Prior to acquisition, lease or rental of the immovable or the related right by the contracting authority or by giving it into the disposal of the contracting authority on other legal basis, performing of the public works regarding this immovable according to the requirements specified by the contracting authority based on any method and means.

(4) The public supply contract is the contract having as their object the purchase, also hire, rental or lease, with or without the option to buy, of . A public contract which also includes the delivery of and installation operations shall be considered to be also a public supply contract.

(5) The services referred to in annex 2 of this act are contracted for with the public service contract.

(6) A public contract having as its object both the purchase of and contracting for services mentioned in the annex 2 of this act shall be considered to be a public service contract if the expected cost of the services contracted for with the public contract exceeds that of the to be purchased. In other case it is the public supply contract.

(7) A public contract having as its object both the purchase of and contracting for services mentioned in the annex 2 of this act and which includes the contracting for public works mentioned in annex 1 are only incidental to the principal object of the contract shall be considered respectively either the supply or service public contract.

(8) The contracting authority may not purchase or contract for services with the public works contract which are not necessary for carrying out the public works as the object of this public contract.

## **§ 5. Form of public contract**

(1) The public contract the cost of which is at least 10,000 euros without VAT should be awarded in the written form.

(2) Each contracting authority establishes the form requirements for the public contracts to be awarded, the cost of which remains below the rate mentioned in subsection 1 of this section.

(3) The non-compliance with the form mentioned in this section has no impact on the validity of the public contract.

## **§ 6. Concessions**

(1) Public works concession for the purposes of this act is a contract the object of which is the same as in the public works contract mentioned in section 4(3) of this act and according to which the fee for the works mentioned in the same subsection lies either in the right of the concessionaire to exploit the work or in that right together with the monetary payment of the contracting authority.

(2) A service concession for the purposes of this act is a contract the object of which is the contracting for services mentioned in annex 2 of this act and according to which the fee for the provision of services lies either solely in the right of the concessionaire to provide the specific service and receive fee for the provision of the service from the users of this service or in that right together with the monetary payment of the contracting authority.

## **§ 7. Framework agreement**

(1) For the purposes of this act, “framework agreement” is an agreement between one or more contracting authorities and one or several persons, which establishes the terms governing contracts to be awarded within its validity period on the basis of the latter, in particular with regard to price or price and the quantities or volumes envisaged.

(2) The terms regarding the public contracts are applied to the framework agreements, if not stipulated otherwise in this act.

## **§ 8. Dynamic purchasing system**

(1) For the purposes of this act, a dynamic purchasing system is an electronic process for award of public contracts, during which all interested persons meeting the qualification requirements and who submit an indicative tender which complies with the technical

specification prepared by the contracting authority, may join with it and the contracting authority may award the public contracts with the tenderers having joined the dynamic purchasing system within this period of usage according to simplified procedure.

- (2) The dynamic purchasing system may be established by the contracting authority with the term of up to four years, if the longer term than that is not objectively necessary and justified resulting from the object of the dynamic purchasing system. The contracting authority proceeds, inter alia, from the provisions stipulated in section 58 (2-3) of this act in creating the dynamic purchasing system and awarding the public contracts on the basis of the latter.
- (3) The terms and procedure for creating and use of dynamic purchasing system and awarding the public contracts based on the dynamic purchasing system shall be established by the Government of the Republic.
- (4) The indicative tender in the meaning of this act is the expression of will of the person for joining the dynamic purchasing system which complies with the technical description prepared by the contracting authority. The indicative tender is not the expression of will for awarding the public contract.

## **§ 9. Design contest**

(1) For the purposes of this Act the design contest is a procedure which enables the contracting authority to acquire, mainly in the fields of planning, architecture, engineering works, information systems, software development or data processing, a plan or design selected by a jury in the course of the competition.

(2) The design contest may be organised with the objective to award the public service contract with the winner of the design contest or only with the objective to find suitable design solution for the contracting authority, by giving the prizes to the winners or paying the participation fees to the participants.

## **§ 10. Contracting authority**

(1) The procedure stipulated in this act shall be followed by the following persons and institutions (hereinafter the *contracting authority*):

- 1) state or state authority;
- 2) local government entity, its authority or association;
- 3) other legal person governed by public law or a body of legal person governed by public law;
- 4) a foundation at least one of which founders is a state or which founders include more than half of the persons specified in clauses 2 or 3 of this subsection or more than half of the members of which supervisory board are determined by the persons specified in clauses 1-3;
- 5) a non-profit association if more than half of its members are persons specified in clauses 1-3 of this subsection;
- 6) another legal person in private law which is compliant with the characteristics stipulated in subsection 2 of this section.

(2) The legal person in private law in the meaning of subsection 1 (6) of this section of the contracting authority is:

- 1) which is founded or which operates in the public interests, which has no industrial nor commercial nature and;
- 2) which are mainly financed or where more than half of the members of its management board, administrative body or supervisory board are appointed by or its management is controlled in any other way together or separately by the other persons mentioned in 6) or 1)-5) of the subsection 1 or the relevant persons of any other state which is a contracting party to the EEA Agreement.

(3) The contracting authority for the purposes of this act in operations in the fields of activities mentioned in § 83-89 is also:

- 1) the person whom the special or sole right has been given for acting in the fields of activities mentioned in § 83-89;

- 2) the company with more than half of which share capital is owned by or more than half of the votes represented with the shares or more than half of the members of which management or supervisory board are appointed directly or indirectly by the persons mentioned in subsection 1 of this section or these persons with the relevant persons of any other Member State of the European Union.
- (4) The founder of the person provided in clause 6 of subsection 1 of this section specifies the status of the person as to the features stipulated in subsection 2 in founding the person and the person itself specifies the relevant status for itself in receipt of the public task to be performed or in other case in changing one's status as to the features stipulated in subsection 2 and immediately notifies the Public Procurement Office of the latter.

**§ 11. Contracting for works financed by the contracting authority and the works of the immovable given to the contracting authority by other persons**

- (1) The provisions of this act regarding the contracting authority mentioned in subsection 1 of § 10 of this act should be followed by each person while contracting for the works to be financed within more than 50 percent by the persons specified in subsection 1 of § 10:
  - 1) The works of engineer technical facilities or the buildings medical or educational establishments, works of administrative buildings or sports, recreational or leisure facilities mentioned in class 45.21 of annex 1 of this act and the estimated cost of these works without VAT is equal to the marginal rate of the public procurement in case of the works contract or exceeds it or
  - 2) the services related to the works specified in article 1 of this subsection and the estimated cost of these services without VAT is equal to the marginal rate of the public procurement in case of the supply and service contract or exceeds it.
- (2) In concluding the works contract each person contracting for the works specified in clause 3 of subsection 3 of § 4 of this act for the performing of the obligation related to the delivery of the immovable or its related right to the contracting authority or other obligation related to the use of other immovable, is obliged to follow the provisions of this act on the relevant contracting authority.

## **§ 12. Tenderer and candidate**

(1) The tenderer for the purpose of this act is the person who has submitted the tender in the procurement procedure or indicative tender in case of dynamic purchasing system.

(2) The candidate for the purpose of this act is the person who has submitted the request to participate in the procurement procedure in case of restricted procedure, negotiated procedure with prior publication of a contract notice or competitive dialogue.

(3) The tenderer or candidate may be any person who offers goods, provides services or carries out public works on the market. The contracting authority may restrict in the contract notice the circle of tenderers and candidates in the procurement procedure, without permitting the persons originating from the countries other than mentioned in clause 3 of § 3 of this act to participate in the procurement procedure or grant the advantages for the tenders submitted by the persons coming from the countries mentioned in clause 3 of § 3 of this act before the tenders submitted by the persons coming from other countries.

(4) The persons may submit the tender, indicative tender or request to participate in the procurement procedure jointly (hereinafter respectively *joint tenderers and joint candidates*), if not stipulated otherwise in this act.

(5) Joint tenderers or joint candidates appoint the authorized representative for carrying out the procedures related to procurement procedure and award and performance of the public contract.

(6) The contracting authority may not require as a prerequisite of the adoption of the request to participate in the joint tender or joint procurement procedure that the joint tenderers or joint candidates have established the legal person or have joined in another legal form. If the specification of the legal relations between the joint tenderers in the certain method and



within certain scope is needed for the appropriate performance of the public contract on the basis of the nature of the object of the public contract, the contracting authority may require the relevant specification for the time of fulfilment of the public contract.

(7) The undertaking related to the tenderer or candidate for the purpose of this act shall mean any undertaking over which the tenderer or candidate may exert a dominant influence, either directly or indirectly, or any undertaking which may exert a dominant influence on the tenderer or candidate or which is under the dominant influence of the third person on the basis of the right of ownership, financial participation, legal act or on other basis together with the tenderer or candidate. A dominant influence on the part of an undertaking is presumed when, directly or indirectly in relation to another undertaking it possesses or holds more than half of the other undertaking's share capital or controls a majority of the votes attached to the shares or may appoint more than half of the members of the other undertaking's management or supervisory body.

### **§ 13. Consolidation and authorization of organization of public procurements**

(1) The contracting authorities may organise the public procurement jointly, by authorizing one of the contracting authorities to organize the public procurement. In organizing the public procurement jointly the contracting authorities should apply the rules, which each of these contracting authorities should apply as according to this act while organising such public procurement alone. In organising the public procurement jointly the rules are applied to on the basis of the total estimated value of the public contracts.

(2) The contracting authority is entitled to authorize other contracting authorities to fulfil all obligations resulting from this act related to organization of its public procurement.

(3) The contracting authority has the right to authorize other persons to perform acts relating to procurement procedure.

## **§ 14. Exceptions**

(1) A contracting authority is not obliged to implement the procedure provided for in this act to the following:

- 1) when the goods are purchased or services or public works are contracted for or the works concession will be granted or the design contest will be organised with the main objective to offer or operate the electronic communications networks available for the public or provide electronic communications service to the public for the purposes of the Electronic Communications Act;
- 2) when the contract to be awarded or the design contest to be organised is related to state secret for the purposes of the State Secrets Act or classified information of a foreign state or security information or the information not subject to disclosure or provided the fulfilment of the contract presumes the meeting of special security requirements resulting from the legal acts or when the application of the exception is directly needed to protect the significant state interests;
- 3) when the goods are purchased or the public works are contracted for or the works concession is granted according to the rules resulting from the international agreement in accordance with the Treaty establishing the European Community awarded between Estonia and some foreign country, excl. Member State of the European Union and the objective of the purchase of these goods and contracting for public works or granting the works concession is the joint performance of the public works by Estonia and foreign country or the joint use of the building or when the services are contracted for or the design contest is organised according to the rules resulting from such international agreement and the objective of contracting for these services or organising the design contest is the application or use of the joint project of Estonia and the foreign country;
- 4) when the contract will be awarded or the design contest will be organised on the basis of the international agreement related to the location of military units;
- 5) by concluding the contract or organising the design contest on the basis of the special procedure of international organisation;
- 6) by concluding the contracts for the acquisition, lease or rental of immovables or the related rights, regardless of the type of contract;

- 7) by concluding the contract for services for the acquisition, development, production or co-production of the programme material or its part by the broadcasting organisations and by concluding the contracts related to the transmission time;
- 8) by contracting for the arbitration or conciliation service;
- 9) by contracting for the financial service related to the issue, purchase, sale or assignment of securities or other financial instruments, including the service related to money or capital involvement and the services provided by Eesti Pank;
- 10) by concluding the contract of employment;
- 11) by contracting for the research and development services;
- 12) by contracting for services from another contracting authority or from the association of contracting authorities to whom the sole right for the provision of this service in the relevant territory has been given on the basis of the legal act being in accordance with the requirements of the Treaty establishing the European Community;
- 13) by concluding the contracts with the company whose all or part of shares belong directly to this contracting authority or to the latter including other contracting authorities or the foundation, the sole founder of which is this contracting authority or all founders of which is this contracting authority with other contracting authorities and the major part of which activities is related to the sale of , provision of services or performance of public works for the contracting authorities being its shareholder or founder, provided this company or foundation has supplied the objects to be sold to the contracting authority or the means needed for the manufacture of the , provision of services or performance of public works in the same procedure as the contracting authority would have supplied on the basis of this act;

(2) The European Commission is immediately notified in writing through the Ministry of Finance of the conclusion of the international agreement mentioned in 3) of (1) of this section by the contracting authority having awarded it.

(3) The exception mentioned in 6) of (1) of this section is not applied to contracting for the financial services related to the acquisition, lease or rental of the immovables or the related rights.

(4) The exception mentioned in 11) of (1) of this section is not applied in case only the contracting authority gains benefit from this research and the contracting authority fully pays for the contracted service.

(5) Provided the contracting authority operating in the field of national defence mentioned in (1) of this act of this section awards the contract for defence purposes, applies the procedure stipulated in this act within the scope which is in accordance with article 296 of the Treaty establishing the European Community and the resultant from the legal acts established on its basis.

## **§ 15. Thresholds**

(1) The threshold (hereinafter *the threshold of public procurement*) of the cost of organising the public procurement procedure, granting the works concession and organising the design contest for the purposes of this act is:

- 1) As to the public procurements started in the year 2007 30,000 euros in case of the and service contracts and design contest, 190,000 euros in case of public works contract and works concession;
- 2) As to the public procurements started in the year 2008 and later 40,000 euros in case of the and service contracts and design contest, 250,000 euros in case of public works contract and works concession;

(2) The international threshold is the sum established periodically by the European Commission based on the section 69 of the directive 2004/17 of the European Parliament and Council which harmonises the procurement procedures of purchasers operating in the sector of water, energy, transport and postal services (OJ L 134, 30 April 2004, pgs 1-113) and the section 78 of the directive 2004/18 of the European Parliament and Council on the harmonisation of the procedure of awarding the works, supply and service contracts and which will be published in the Official Journal of the European Union. The international threshold shall be also disclosed by the Public Procurement Office (hereinafter the *Office*) on

its website and on the website of the registry of the responsible processor of State Public Procurement Register (hereinafter the *registry*).

## **§ 16. Application of rules of procedure in awarding the public contracts**

(1) The contracting authority mentioned in subsection 1 of section 10 is not obliged to organise the procurement procedure pursuant to the procedure stipulated in this act, provided the estimated value of the public contract without VAT is less than the threshold of public procurement. In this case the contracting authority proceeds only from the requirements stipulated in this chapter in awarding the public contract, above all from the general principles of organising the public procurement stipulated in § 3 and from the requirement to submit the public procurement report stipulated in subsection 2 of section 37.

(2) The contracting authority mentioned in subsection 1 of section 10 applies the procedure stipulated in chapter 2 in awarding the public contract, provided the estimated value of public contract without VAT is equal to the threshold of public procurement or exceeds it.

(3) The contracting authority mentioned in subsection 1 of section 10 may apply the procedure stipulated in chapter 5 instead of the procedure stipulated in chapter 2 in awarding the public contract, when it awards the public contract, the main objective of which is related to its activities in the fields mentioned in § 83-89 and the estimated value of the public contract without VAT is equal to the threshold of the public procurement or exceeds it.

(4) The contracting authority mentioned in subsection 3 of section 10 of this act is not entitled to organise the procurement procedure pursuant to the procedure stipulated in this act, provided the estimated value of the public contract without VAT is lower than the international threshold. In this case the contracting authority proceeds from the requirements stipulated in this chapter, above all from the general principles of organising the public procurement stipulated in section 3.

(5) The contracting authority mentioned in subsection 3 of section 10 applies the procedure stipulated in chapter 5, when the latter awards the public contract, the main objective of which is related to its activities in the fields mentioned in § 83-89 and the estimated value of the public contract without VAT is equal to the international threshold or exceeds it. The mentioned obligation is valid also in case the award of the public contract is related to its activities in the fields mentioned in § 83-89, but the main objective of the public contract could not be specified.

(6) The request to award the public contract, the estimated value of which without VAT exceeds 20,000 euros in case of products or services or 130,000 euros in case of public works, if the contracting authority is the one mentioned in subsection 1 of section 10 of this act or exceeds 40,000 euros in case of products or services or 250,000 euros in case of public works if the contracting authority is the one mentioned in subsection 3 of section 10, but is lower of the threshold from which on the relevant contracting authority should organise the procurement procedure, is notified of by the contracting authority on its website or, if non-existent, in the local or county newspaper.

(7) The contracting authority mentioned in subsection 3 of section 10 of this act notifies of the award of the public contract, the cost of which without VAT exceeds 40,000 euros in case of products or services or 250,000 euros in case of public works, but is lower of the international threshold, on its website within ten days pursuant to the award of public contract.

(8) The contracting authority has the right to apply the compulsory procedure resulting from the threshold of the public procurement, international threshold or financial rate stipulated in subsection 6 or 7 of this section or the nature of the public contract also in awarding the public contract, the estimated value of which is not amounting to the relevant financial rate or which is non-compliant with the feature conditioning with this procedure as to its nature.

(9) Provided the contracting authority starts the procurement procedure without the relevant obligation resulting from the law, it is obliged to follow the relevant procurement procedure stipulated in this act.

## **§ 17. Application of rules of procedure in granting the concessions**

(1) The contracting authority mentioned in subsection 1 of section 10 of this act applies the procedure stipulated in chapter 3 in granting the works concession, provided the total

estimated value of public works carried out on the basis of the works concession is equal to the threshold of public procurement or exceeds it.

(2) The contracting authority mentioned in subsection 1 of section 10 of this act is not obliged to follow the procedure of granting the works concessions stipulated in this act and proceeds from the requirements stipulated in this chapter in granting the works concession, above all from the general principles of organising the public procurement stipulated in section 3, provided it grants the works concession related to its activities in the fields mentioned in § 83-89 or if the estimated total value of the public works made on the basis of the works concession is lower of the threshold of the public procurement.

(3) The contracting authority mentioned in subsection 3 of section 10 of this act is not obliged to follow the procedure of granting the works concessions stipulated in this act and proceeds from the requirements stipulated in this chapter in granting the works concession, above all from the general principles of organising the public procurement stipulated in section 3.

(4) In granting the concession of services the contracting authority proceeds only from the requirements stipulated in this chapter, above all from the general principles of organising the public procurement stipulated in section 3.

#### **§ 18. Application of rules of procedure in organising the design contests**

(1) The contracting authority mentioned in subsection 1 of section 10 of this act applies the procedure stipulated in chapter 4 in organising the design contest, provided the estimated value of design contest is equal to the threshold of the public procurement or exceeds it.

(2) The contracting authority mentioned in subsection 3 of section 10 applies the procedure stipulated in chapter 4 in organising the design contest, when it organises the design contest related to its activities in the fields mentioned in § 83-89 and the estimated value of design contest is equal to the international threshold or exceeds it.

## **§ 19. Services contracted for by simplified procedure**

(1) The contracting authority is not obliged to organise the procurement procedure according to the procedure stipulated in this act in awarding the service contract, of which the estimated value of the services mentioned in part B of annex 2 of this act makes more than 50 percent.

(2) The contracting authority is obliged to organise the procurement procedure regardless of the stipulations in subsection 1 of this section, if the total estimated value of the products being the object of the public contract of such services and the services mentioned in part A of annex 2, besides the services mentioned in part B of annex 2 or the estimated value of public works is equal to the threshold of the public procurement or exceeds it.

(2) If the value of the public contract mentioned in subsection 1 of this section without VAT is equal to the threshold of public procurement or exceeds it, the contracting authority submits the public procurement report according to the procedure stipulated in § 37 pursuant of this act after awarding the public contract. If the estimated value of such public contract without VAT is equal to the international threshold or exceeds it, the contracting authority is obliged to follow the rules of preparing the technical specification stipulated in § 33. As to the rest the contracting authority proceeds from only the requirements stipulated in this chapter in awarding of such public contracts, above all from general principles of organising the public procurement stipulated in § 3.

## **§ 20. The rules for calculation of the estimated value of public procurement**

(1) The estimated value of public procurement has been calculated without VAT:

- 1) the total sum to be presumably paid in performing the public contract by the contracting authority, considering, inter alia, the potential obligations arising in the future based on the public contract and the renewal of the public contract;
- 2) potential awards or participation fees granted in the design contest;
- 3) the estimated total value of public works to be carried out based on the works concession.

(2) The calculation of the estimated value of public procurement should be prepared based on the price level corresponding to the average market price of the moment of disclosure of the



notice of procurement procedure or starting the design contest or works concession in the register.

(3) The estimated maximum total value without VAT of the public contracts to be awarded based on the latter within the validity period of framework agreement or dynamic purchasing system is the basis for calculating the estimated value of public contracts to be awarded based on the estimated value of framework agreement or dynamic purchasing system.

(4) When in case of open or restricted procedure the possibility of awarding the new works or service contract is notified of in the procurement notice by negotiated procedure without prior publication of contract notice according to the procedure stipulated in 2) of (5) of § 28 of this act, the estimated value of public works or services contracted for based on such additional public contract is included in the estimated value of public contract.

(5) Provided the contracting authority precludes no award of the service contract based on the results of design contest, the estimated value of design contest consists of the total sum of awards or participation fees paid to the participants including the estimated value of the service contract to be presumably awarded.

(6) No choice of the basis for calculating the estimated value of public procurement should be used for carrying out the public procurement for avoiding the established procedure or following the requirements. If the calculation of the estimated value of public procurement is possible based on several methods resulting from the stipulations in this chapter and in using at least one of these methods the estimated value of the public procurement would be equal either to threshold of public procurement or international threshold or would exceed the relevant threshold, the contracting authority should calculate the estimated value of the public procurement on the basis of this method.

(7) If the contracting authority pays the participation fee to cover the expenses related to participation in the cases stipulated in this act to the participants in the public procurement, it includes the participation fee in the estimated value of the public procurement.

## **§ 21. Calculation of the estimated value of the public supply or public service contract**

(1) The estimated value of the public supply contract, the object of which is the hire, rental or lease of products is:

- 1) in case of fixed-term public contract the estimated total value of public contract within its validity period, provided the term of public contract is 12 months or less;
- 2) in case of fixed-term public contract the estimated total value of public contract with the estimated residual value of the object pursuant to the termination of the term of public contract when the term of public contract is more than 12 months;
- 3) in case of public contract without a fixed term or the public contract, the term of which could not be specified at the moment of calculating the estimated value, the estimated monthly payment multiplied by 48.

(2) The estimated value of the public supply or public service contract, which is regular in its nature or which is intended to be renewed within a given period, is:

- 1) the total value of the successive similar public contracts awarded during the preceding 12 months or the previous financial or budgetary year, by taking, if possible, the estimated changes in the quantities to be purchased or ordered into account or in the price during the next period or;
- 2) the estimated total value of the successive similar public contracts awarded during the next 12 months or the financial or budgetary year from the award of the first public contract.

(3) The calculation of the estimated value of the public contract of insurance services is based on the insurance premium and other forms of remuneration.

(4) The calculation of the estimated value of the public contract of banking or other financial services is based on the service fees, commissions, interest and other forms of remuneration.

(5) The estimated value of the public contract of planning services is based on the service fees, commissions and other forms of remuneration.

(6) The basis for calculating the estimated value of the service contract which stipulates no total value of the public contract is:

- 1) in case of fixed-term public contract with the term of 48 months or less, the estimated total value within the validity period of public contract;
- 2) in case of public contract without a fixed term or public contract with the longer term than 48 months, the value of provision of services in one month multiplied by 48.

## **§ 22. Calculation of the estimated value of the public works contract**

(1) The calculation of the estimated value of the public works contract is based on the estimated cost of public works to be carried out in one building or different mutually functionally related buildings, to which the estimated value of the objects needed for executing the public works and transferred to the tenderer at the moment of transfer is added.

(2) When the object is given into the use of the tenderer for the period of carrying out the public works and this object will not be fully amortised during the performance of the public works, the average market price for using this object during the state of use by the tenderer is added to the estimated value of public works.

## **§ 23. Division of public procurement into lots**

(1) The contracting authority is not entitled to divide the public procurement into lots to avoid the procedure established for carrying out the public procurement or to avoid the following of the requirements in this act, especially when the objects of the public contract are the similar or functionally jointly operating, services or public works needed for achieving the same objective.

(2) The procedure to be applied to the award of public contract with the total estimated value of all lots is applied in awarding the public contract per each part of the public procurement divided into lots.

(3) Provided the total estimated value of all lots of the public procurement to be divided into lots is equal to the international threshold or exceeds it, the contracting authority may deviate from the requirements stipulated in subsection 2 of this section and apply the public contract award procedure with the estimated value of the relevant lot in public contract award provided the total value of these lots does not exceed 20 percent of the total estimated value of the public procurement and the value of each such lot without value-added tax is less than:

- 1) 80,000 euros in case of public supply or public service contracts;
- 2) 1 million euros in case of the public works contracts.

#### **§ 24. Division of public procurement into lots within one procurement procedure**

The contracting authority may divide the public procurement into lots within one procurement procedure, by taking the estimated total value of all lots into account in calculating the estimated value of the public procurement and by stipulating in the procurement notice, whether it allows one tenderer to submit the tender to one, several or all lots.

### **Chapter 2**

## **PROCUREMENT PROCEDURE**

### **Title 1**

#### **Types of procurement procedure and their application**

#### **§ 25. Open and restricted procedure**

(1) Open procedure is the procurement procedure, whereby any interested person compliant with the requirements stipulated in subsection 3 of § 12 and possible restrictions established on the basis of the same section (hereinafter the *interested person* in this title) may submit a tender.

(2) Restricted procedure is the procurement procedure, in which any interested person may submit the request to participate in the procurement procedure, but the tender may be submitted only by the candidates chosen by the contracting authority on the basis of the objective and non-discriminatory criteria, to which the contracting authority submits the tender invitation.

(3) The contracting authority is obliged to organise the procurement procedure as open or restricted procedure, provided no other stipulations have been fixed in this act.

## **§ 26. Competitive dialogue**

(1) Competitive dialogue is a procurement procedure whereby any interested person may submit the request to participate in the procurement procedure and whereby the contracting authority conducts a dialogue with the candidates admitted on the basis of objective and non-discriminatory criteria to that procedure with the aim to develop one or more suitable solutions capable of meeting its needs regarding the performance and functional requirements. The contracting authority submits the tender invitation to the candidates chosen as a result of the dialogue and selects the successful tender on the basis of the tender evaluation criteria laid down in the contract notice or in the invitation to start a dialogue.

(2) The contracting authority is entitled to organise the procurement procedure as competitive dialogue, provided the contracting authority is not objectively able to define the technical solutions meeting its needs in accordance with the stipulations of § 33 or is not objectively able to specify the legal or financial circumstances related to the procurement with adequate precision and thus the public contract may not be awarded without unreasonable expenses or technical problems as a result of open or restricted procedure and the contracting authority awards the public contract on the basis of the most economically advantageous tender.

(3) Regardless of the terms stipulated in subsection 2 of this section the contracting authority is entitled to organise the procurement procedure as competitive dialogue, provided the estimated value of the public procurement is below the international threshold.

## **§ 27. Negotiated procedure with prior publication of a contract notice**

(1) Negotiated procedure with prior publication of contract notice is a procurement procedure, in which any interested person may submit the request to participate in the procurement procedure and the contracting authority submits the tender invitation to at least three candidates chosen by it on the basis of the objective and non-discriminatory criteria and negotiates with them the tenders to adjust the tenders submitted by them with the requirements stipulated in the contract documents and select the successful tender.

(2) The contracting authority is entitled to organise the negotiated procedure with prior publication of a contract notice:

- 1) in the event no tender compliant with the requirements stipulated in the contract documents or contract notice were submitted in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the public procurement are not substantially altered;
  - 2) when the nature of the public works, goods or services or the risks attaching thereto do not enable to specify the estimated value of the public contract;
  - 3) in the case the nature of services being the object of the public contract, including the services within category 6 of annex 2 of this act, and services connected with intellectual property rights for example services involving the design of works, insofar as the nature of the services to be provided is such that terms of the public contract cannot be established with sufficient precision to permit the award of the public contract as a result of open or restricted procedure;
  - 4) in respect of works contracts being the object of the public contract which are performed solely for purposes of research or development or for testing and not with the aim of gaining profit or covering the research or development costs;
- (3) Regardless of the terms stipulated in subsection 2 of this section the contracting authority is entitled to organise the procurement as the negotiated procedure with prior publication of a contract notice, if the estimated value of the public procurement is below the international threshold.

#### **§ 28. Negotiated procedure without prior publication of a contract notice**

- (1) In case of negotiated procedure without prior publication of a contract notice the contracting authority negotiates the terms of the public contract with one or more interested persons at its own choice, having previously submitted them the contract documents.
- (2) The contracting authority is entitled to organise the procurement procedure as a negotiated procedure without prior publication of a contract notice if:
  - 1) no tenders or no requests to participate in the procurement procedure have been submitted during the open procedure or a restricted procedure or all submitted tenders were substantially different from the technical description of the object of the public contract stipulated in the contract documents and the initial terms of the public procurement are not substantially altered;

- 2) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular tenderer;
- 3) immediate award of the public contract is necessary due to the extreme need brought about by events unforeseeable by the contracting authority and not dependent on the contracting authority and which do not enable to withhold from the dates stipulated in § 35 of this act.

(3) Upon request of the European Commission the contracting authority sends the relevant report on the circumstances of implementation of the basis stipulated in clause 1 of subsection 2 of this section to the European Commission through the Ministry of Finance.

(4) For awarding the supply contract in addition to the bases stipulated in subsection 2 of this section contracting authority is entitled to organise the procurement procedure as a negotiated procedure without prior publication of a contract notice if:

- 1) as the object of the contract are manufactured purely for the purpose of research, experimentation, study or development and do not involve quantity production which are produced or for covering the expenses related to research or development activities;
- 2) are purchased from the original tenderer for partial replacement or completion of the goods earlier purchased from the original tenderer and where a change of supplier obliges the contracting authority to acquire goods which would result in incompatibility with the existing or which operation and would result technical problems, whereas the length of such additional public contract may not exceed three years;
- 3) are purchased on a commodity market;
- 4) for the purchase of on particularly advantageous terms from the person as to whom the liquidation procedure has been initiated or from the trustee in bankruptcy on the basis of the agreement concluded with the creditors.

(5) For awarding the works or service contracts in addition to the bases stipulated in subsection 2 of this section contracting authorities may use a negotiated procedure without prior publication of a contract notice if:

- 1) the additional works or services not included in the initial project or in the original public contract are contracted for from the same tenderer, but which have, through unforeseen circumstances, become necessary for performance of the works or services described in the original contract within 20 percent of the value of the original public contract, on

condition that the award is made to the same tenderer, when such additional works or services cannot be technically or economically separated from the original contract without major expenses to the contracting authority or when such additional works or services are strictly necessary for the completion of the original public contract;

- 2) new works or services consisting in the repetition of similar works or services entrusted to the tenderer to whom the same contracting authority awarded an original contract, provided that such works or services are in conformity with the original project for which the original contract was awarded three years ago according to the open or restricted procedure, whereas in the contract notice the possibility of awarding of such public contract was indicated.

(6) The contracting authority is entitled to organise the procurement procedure as a negotiated procedure without prior publication of a contract notice in awarding the service contract in addition to the bases stipulated in section 2 of this section, provided the public contract will be awarded with the winner of the design contest or with one of the winners and such condition has been stipulated in the design contest notice. Provided the public contract will be awarded with one of the winners of the design contest, negotiations will be held with all winners.

(7) The contracting authority is entitled to organise the procurement procedure as a negotiated procedure without prior publication of a contract notice in addition to the bases stipulated in subsections 2 and 4-6, if the estimated value of the public procurement is below international threshold and:

- 1) the object of the public contract is the licence to use the documents or database of the library;
- 2) goods are purchased with the considerably lower price of the usual market price by using the especially advantageous terms offered within very short time period;
- 3) goods are purchased or services or works are contracted for the diplomatic representation in the foreign country;
- 4) goods are purchased or services are contracted for by the contracting authority in meaning of clauses 1 and 2 of subsection 1 of § 10 of this act from the custodial



institution or from the state company managing the production units of the custodial institution;

- 5) the object of the public contract is the air transport services.

## **Title 2**

### **General principles of procurement procedure**

#### **§ 29. Opening and termination of procurement procedure**

(1) In order to start the open, restricted or negotiated procedure with prior publication of a contract notice or the competitive dialogue the contracting authority submits the contract notice to the register through the website of the register.

(2) The procurement procedure starts with publishing of a contract notice in the register, excluding the negotiated procedure without prior publication of a contract notice. The negotiated procedure without prior publication of a contract notice starts with the submission of the contract documents by the contracting authority to one or more interested persons chosen by it.

(3) Procurement procedure terminates with:

- 1) the award of public contract or the framework agreement;
- 2) the rejection of all tenders due to the reason that no tender was declared compatible;
- 3) the rejection of all tenders on the bases stipulated in § 49 of this act;
- 4) the exclusion of all tenderers or candidates from the procurement procedure or leaving them unqualified;
- 5) non-submission of tenders or requests to participate in procurement procedure pursuant to the procedure stipulated in this act within the specified time period;
- 6) the declaration of the procurement procedure invalid by the Office or by the contracting authority itself on the basis of the prescription of the Office or in case of the justified need on its own initiative;

- 7) the termination of the term of validity of all tenders provided no tenderer agrees to extend the term of validity of the tender.

(4) If a contracting authority divides a public procurement into lots within one procurement procedure, the procurement procedure terminates pursuant to the occurrence of any basis stipulated in subsection 3 to any lot or in case the decision mentioned in clause 6 of the subsection 3 on declaring the procurement procedure invalid is made on the whole procurement procedure.

### **§ 30. Prior information notice**

Where the contracting authority wishes to apply shortened time limits for the submission of tenders as stipulated in subsection 5 of § 35 of this act, it has to submit the prior information notice to the register:

- 1) as soon as possible after the beginning of its financial or budgetary year on the public contracts for the goods and services mentioned in part A of annex 2 of this act according to the types of goods or categories of services listed in part A of annex 2 it intends to award over the financial or budgetary year ;
- 2) on the planned works contracts as soon as possible after the adoption of the relevant decision.

### **§ 31. Contract documents**

- (1) The contracting authority shall prepare the contract documents prior to starting the procurement procedure in case of the open procedure and negotiated procedure without prior publication of a contract notice and in case of restricted procedure and negotiated procedure with prior publication of a contract notice at the date of submission of requests to participate in the procurement procedure at the latest. The contract documents shall be prepared in the written form or in the electronic form according to the requirements stipulated in this act and in the legal acts established on its basis, provided the contracting authority has notified of using the electronic form in a contract notice.

- (2) The contract documents shall include at least the following information, unless otherwise provided in this act or if the relevant information has not been mentioned in the contract notice:
- 1) the proposal to submit tenders according to the terms included in the contract notice and contract documents, where the contracting authority prepares the contract documents in open procedure;
  - 2) the technical specification of the object of the public contract prepared according to the requirements stipulated in § 33 of this act;
  - 3) all terms of the future public contract or the draft of the public contract, excluding the circumstances mentioned in clause 4 of this subsection;
  - 4) all these circumstances on which the contracting authority requires the competitive tenders;
  - 5) the structure of the tender and the list of required documents and the requirements for labelling the tender;
  - 6) the language and languages of preparing the tender;
  - 7) the structure and currency of submitting the value of the tender;
  - 8) the requirement for the tenderer to confirm the take-over of all terms provided in the contract notice and contract documents in the tender and submit the tender only on these circumstances on which the contracting authority requires the competitive tenders;
  - 9) the requirement to the tenderer to indicate in the tender, in which extent of the volume of the public contract the tenderer plans to award the subcontracts with the names of the planned subcontractors which participate directly in the performance of the public contract and information regarding the share and nature of the part of public contract, as to which the tenderer plans to award the subcontracts with them and provide the confirmation in the tender that the tenderer may involve other subcontractors in performance of the essential part of the volume of the public contract only upon the consent of the contracting authority pursuant to the receipt of the confirmation on the absence of the bases of elimination from the procurement procedure regarding them;
  - 10) the date and place of submission of the tenders;
  - 11) the minimum tender validity period;

- 12) the amount of tender security if the contracting authority requires the submission of tender security;
- 13) contact data from where the additional information on the content of the contract documents could be additionally asked about;
- 14) the exact place and time for opening the tenders;
- 15) the bases for rejection of all tenders, if the contracting authority requires establishing these.

(3) The contracting authority mentions in the contract documents whether it awards the public contract on the basis of the most economically advantageous tender or only on the basis of the lowest price, if not mentioning it in the contract notice. The contracting authority may award the public contract only on the basis of the tender with the lowest price, provided the economical advantageousness of the tender for the contracting authority depends only on the price of the tender and all other terms of the future public contract, including the criteria related to the object of the public contract, have been comprehensively specified in the contract documents.

4) Provided the contracting authority awards the public contract on the basis of the most economically advantageous tender, the contracting authority also specifies the tender evaluation criteria enabling the objective evaluation related to the object of the public contract, above all quality, price, technical value, aesthetical and functional properties, properties influencing the environment, operating expenses, feasibility, post-sales maintenance and technical assistance and its cost, specific proven skills or experience of the persons directly responsible for the provision of services or carrying out public works, on which the quality of works carried out or services provided directly depends, the date of performance of the public contract. The contracting authority specifies the objectively grounded relative weight from the viewpoint of most economically advantageous tender, which is assigned to each selected tender evaluation criterion.

(5) Provided the contracting authority awards the public contract on the basis of the most economically advantageous tender and the contracting authority has stipulated the possibility to submit also the alternative solutions in the tender in addition to the solution compliant with all terms stipulated in the contract notice and contract documents in the tender, it specifies the

requirements in the contract documents, with which the alternative solutions should comply with and the terms of submission of alternative solutions.

(6) Provided the contracting authority plans to organise the competitive dialogue or negotiated procedure with prior publication of a contract notice as successive stages, by reducing the number of solutions being the object of the dialogue in each stage or the number of tenders under negotiations, it notifies of it in the contract documents, invitation to start the dialogue or in the contract notice.

(7) In case of award of service or works contract the contracting authority may stipulate the condition that the tenderer should provide the major part of the services or carry out the major part of the public works (fulfil the major part of public contract) itself. Such restriction based on the nature of the public contract has to be necessary for quality assurance of performance of the public contract, for ensuring verifiability of performance of the public contract or on other objective reason and in accordance with the generally accepted good practice in the relevant field. The restriction of subcontracting does not apply on the subcontract from the undertaking related to the tenderer.

(8) Provided the contracting authority has notified of the carrying out of the electronic auction in the contract notice, at least the following data should be additionally included in the contract documents:

- 1) indicators in the tender specified by number or percent, the comparison of which values is the object of electronic auction;
- 2) restrictions to the values of the indicators mentioned in clause 1 of this subsection resulting from the object of the public contract;
- 3) the information which will be made available to tenderers in the course of the electronic auction and, if needed, the date when it will be made available to them;
- 4) the information concerning the electronic auction process;
- 5) the terms on the basis of which the tenderers participate in the electronic auction, in particular, the minimum differences, by which the new values or prices presented during the auction should differ from the earlier ones;

- 6) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for the internet connection.
- (9) If the contracting authorities organise the public procurement jointly on the basis stipulated in § 13 of this act, the contracting authority authorised to organise the public procurement specifies the contracting authorities being the parties of the public contracts to be awarded in the contract documents, their division as to the public contracts and their shares in fulfilling the obligations resulting from the public contracts.
- (10) The contracting authority should enable the interested persons to examine the contract documents free of charge. The contracting authority enables to examine the contract documents on site or on the website. The contracting authority may require the fee for the delivery of contract documents on paper which should not exceed the copying and delivery costs of contract documents.

### **§ 32. Technical specification**

(1) Technical specification in the meaning of this act has been established by using the understandable terminology and degree of accuracy for the persons acting in the relevant field to describe the object of the public contract by the contracting authority is:

- 1) set of the characteristics and technical requirements on public works being the object of the works contract ;
- 2) a list of the characteristics and substantial properties of goods or services being the object of the supply or service contract.

(2) The set of technical requirements applicable for the public works shall describe the requirements for materials, or goods in the manner which enables to evaluate their suitability with the purpose of use of the object set by the contracting authority. These requirements may involve among other things environmental requirements and constructional requirements, including the requirement of accessibility criteria for people with disabilities, conformity assessment, requirements to performance, security or measurements, quality assurance means, used terminology, symbols, testing and test methods, requirements for packaging, marking and labelling and production process and technology. The mentioned requirements may also include the prescriptions related to planning and cost of the building, testing, supervision and acceptance terms, requirements for usage instructions and construction methods, technology

and all other technical terms which may be described by the contracting authority and which are related to the completed buildings, their materials or parts.

(3) The list of essential characteristics of goods or services may include among other things environmental requirements, requirements for quality and construction, including the requirement of accessibility criteria for people with disabilities, conformity assessment, efficiency, requirements on performance of the product, security or measurements and to the name of the product under which it is distributed, compliance requirements, used terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, also requirements for production process and technology and conformity assessment methods.

### **§ 33. Preparation of technical specification**

(1) Provided the relevant field has no technical standard, the technical specification of the object of public contract is prepared on the basis of the following order:

- 1) Estonian standard transposing a European standard;
- 2) European standard;
- 3) European technical approval established by the approval body appointed by the Member State of the European Union and which confirms that proceeding from the technical viewpoint the product with its features is suitable to fulfil the particular purpose regarding the compliance with the essential requirements set for the public works in compliance with its features and foreseen application or use terms;
- 4) Common technical specification established according to the procedure approved by the Member State of the European Union and published in the Official Journal of the European Union;
- 5) International standard;
- 6) Technical control system established by some standard organisation of the European Union;
- 7) The original Estonian standard, Estonian technical approval or Estonian technical specification related to the design, , accounting methods or implementation of public works or use of goods.

(2) Each reference made by the contracting authority to the basis mentioned in subsection 1 of this section in the technical specification shall be accompanied by the note “or equivalent“.

(3) The technical specification may be also prepared as a whole or as to some feature based on the specification of the performance or functional requirements of the object of the public contract instead of the bases mentioned in subsection 1 of this section which could also include environmental requirements. Such specification should be sufficiently precise for specifying the object of the public contract by the tenderer and for the award of the public contract.

(4) In preparing the technical specification on the basis mentioned in subsection 3 of this section the basis mentioned in section 1 may be referred by the contracting authority as the mean to guarantee the compliance with the performance or functional requirements mentioned in subsection 3.

(5) Provided the basis of technical specification is among other things the environmental requirements mentioned in subsection 3 of this section, these requirements may be also specified as the set of requirements expressed as the term of receiving the European, Estonian or international or other eco-labels or on the basis of single requirements provided that:

- 1) such requirements are appropriate to define the characteristics of the goods or services that are the object of the public contract;
- 2) such requirements are drawn up on the bases of scientific information;
- 3) by adopting these eco-labels the procedure open for all interested persons and organisations has been used;
- 4) the application of the usage permit of these eco-labels is accessible to all interested persons.

(6) In the technical specification may be indicated that goods or services bearing the eco-label compliant with the terms mentioned in subsection 5 of this section are presumed to comply



with the technical specification concerning the requirements expressed as the term of receiving this eco-label.

(7) The technical specifications shall not refer to a specific purchase source, process, trademark, patent, type, specific origin or production with the effect of favouring or eliminating certain tenderers or certain. Such reference shall be permitted in case, if this is unavoidably necessary resulting from the object of the public contract due to the fact that a sufficiently precise and intelligible description of the object of the public contract pursuant to the subsections 1 and 3 of this section is not possible. Such reference shall be accompanied by the words or “equivalent“.

(8) The technical specification shall afford equal opportunities to all tenderers for submission of tenders and not create unjustified obstacles to the opening up of public procurement to competition.

(9) Whenever technically possible and relevant, the possible usage requirements for people with disabilities need to be taken into consideration in preparing the technical specification related to the object of the public contract or prepare the technical specification so that all people could use the object of the public contract.

#### **§ 34. Tender security**

(1) The contracting authority may require the tender security from the tenderer which ensures the full or partial compensation of the losses incurred due to the failure to fulfil the obligations within the procurement procedure to the contracting authority by the tenderer, but no more than one percent of the estimated value of the public contract.

(2) Tender security should be required in the same amount from all tenderers.

(3) Provided the contracting authority has divided the public procurement within one procurement procedure into lots, it may require the tender security also only on some lot. As to one lot the tender security should be required from all tenderers in the same amount.

(4) The contracting authority requires the tender security as the guarantee of the credit or financial institution or insurer or as the depositing of cash amount to the settlement account of the contracting authority.

(5) The tender security remains with the contracting authority or the contracting authority will have the right to realise it, provided:

- 1) the tenderer is excluded from the procurement procedure;
- 2) the tenderer withdraws the tender within its validity date.

(6) The contracting authority returns the tender security to the tenderer within three working days after:

- 1) enforcement of the awarded public contract;
- 2) termination of the validity date of its tender;
- 3) declaration of procurement procedure invalid;
- 4) withdrawal of tender in case stipulated in subsection 2 of § 44 of this act.

### **§ 35. The dates for submitting the tenders and requests to participate in procurement procedure**

(1) The contracting authority shall fix the time limits for submission of tenders or requests to participate in the procurement procedure based on the object of the public contract, above all its complexity and quantity, volume or amount.

(2) In case of open procedure the date for submission of tenders shall not be shorter than 52 days from the publishing of the contract notice in the register.

(3) In case of restricted procedure, negotiated procedure with prior publication of a contract notice and competitive dialogue the date for submission of the requests to participate in the procurement procedure shall not be shorter than 37 days from the publishing of contract notice in the register.

(4) In case of restricted procedure the date of submission of tenders shall not be shorter than 40 days from the submission of the tender invitation to the candidates.

(5) In case of negotiated procedure with prior publication of a contract notice and competitive dialogue the date of submission of tenders may be specified by the agreement between the contracting authority and the candidates chosen by the contracting authority, provided all chosen candidates have equal time for the submission of tenders. If no agreement is reached, the contracting authority specifies the date for the submission of tenders which shall not be shorter than 24 days from submitting the tender invitation.

(6) Provided the contracting authority has submitted the prior information notice according to the procedure set in § 30, the date for submission of tenders shall not be generally shorter than 36 days in case of procurement procedures mentioned in subsections 2 and 4 of this section. Provided the prior information notice included all obligatory information required in the contract notice and it was submitted to the register 52 days up to 12 months prior to the submission of contract notice, the dates mentioned shall not be shorter than 22 days. When the contracting authority enables the unrestricted and full electronic access to the contract documents beginning from the date of submission of the contract notice to the register and refers to the relevant website in the contract notice, the mentioned dates may be shortened by 5 days.

(7) Provided the estimated value of the public contract is equal to the threshold of public procurement or exceeds it, but is below of the international threshold, the date mentioned in subsection 2 of this section shall be at least 22 days in case of works contract, at least 15 days in case of supply or service contract, the date mentioned in subsection 3 at least 7 days and the date mentioned in subsection 4 in case of works contract at least 22 days and in case of supply or service contract at least 15 days.

(8) Provided the contracting authority submits no contract documents or additional information to the candidates or the persons interested in participating in the procurement procedure within the dates stipulated in the this section, although these were applied in time for or when the tenders may be made only after a visit to the site of performance of the contract or after on-the-spot inspection of the documents supporting the contract documents,

first of all documents being the basis for preparing of the technical specification, the contracting authority extends the time limits of submission of tenders if needed by the reasonable date and extends the time of opening the tenders so that all candidates or the persons interested in participation in the procurement procedure received all information needed for submitting the tender.

(9) The contracting authority may extend the date of submission of tenders or the requests to participate in the procurement procedure and, if needed, thus change the time of opening the tenders. The date is not extended when the original date arrives before the publishing of the changed contract notice in the register or before the forwarding of the changed contract documents to all tenderers and to these candidates and interested persons who have received the contract documents.

### **§ 36. Change of contract notice and contract documents**

(1) The contracting authority may change the contract notice or contract documents prior to the date of submitting of tenders or requests to participate in the procurement procedure fixed in the contract notice.

(2) In order to change the contract notice the contracting authority shall submit the new contract notice to the register and immediately notifies all tenderers, candidates and the interested persons having received the contract documents of it.

(3) By changing the contract documents the contracting authority forwards the changed contract documents simultaneously to all tenderers and to the candidates and interested persons having received the contract documents.

(4) ) In changing the contract notice or contract documents the contracting authority shall extend the date of submission of tenders or requests to participate in the procurement procedure so that the date of submission of tenders or the date of submission of the requests to participate in the procurement procedure to the persons mentioned in subsection 3 of this section from the publishing of the changed contract notice in the register or forwarding of the changed contract documents would be at least equal to the half of the relevant minimum date stipulated in this act. The contracting authority must not extend the mentioned date, provided

the changes concern only the contact data or in other cases, if the tender prepared on the basis of the original notice and contract documents could not become non-compliant due to the changes made or if the tenderer or candidate compliant with the qualification criteria on the basis of the original notice could not remain unqualified due to the changes made.

(5) By only extending the dates and changing the date of opening of tenders on the basis stipulated in subsection 9 of § 35 of this act, the changed date should not comply with the stipulations in subsection 4 of this section.

### **§ 37. Public procurement report**

(1) The contracting authority shall submit the public procurement report to the register through the website of the register within ten days after the end of the procurement procedure.

(2) The contracting authority shall submit the public procurement report to the register within ten days after the end of the public procurement procedure also in case the value of the public contract exceeds 10,000 euros without VAT in case of goods or services or 30,000 euros in case of public works. The mentioned obligation shall not apply in case of public contracts awarded on the basis of the framework agreement.

(3) Provided the contracting authority has divided the public procurement within one procurement procedure into lots, it shall submit the public procurement report within 45 days at the latest after concluding the public contract concerning some lot, when by such moment any bases of termination of the procurement procedure stipulated in subsection 3 of § 29 of this act have not occurred as to all lots. The contracting authority shall submit the separate public procurement report on the remaining lots within 45 days pursuant to the occurrence of any bases of termination of the procurement procedure stipulated in subsection 3 of § 29 of this act as to any of these lots.

(4) The contracting authority shall submit the annex of the public procurement report pursuant to the termination of the public contract or framework agreement within 10 days to the register, which includes the following:

- 1) the changes made in the public contract including the reasons of changes and the major differences of performance of the public contract compared to the stipulations in the public contract, first of all the violation of the public contract or pre-term termination,
- 2) major subcontractors having participated in the direct performance of the public contract based on the subcontracts, including the description of the performance made or the value of the subcontract or
- 3) the values of the public contracts awarded on the basis of the framework agreement or the descriptions of the performance made on the basis of the latter.

### **Title 3**

#### **Verification of qualification of the tenderer and candidate**

#### **§ 38. Exclusion of the tenderer and candidate from the procurement procedure**

(1) The contracting authority shall not conclude public contract with the person and shall exclude the tenderer or candidate from the procurement procedure at any time:

- 1) which is or which legal representative has been the subject of a conviction by final judgement for organizing the criminal group or belonging thereto or violation of the requirements of public procurement, committing of offences related to professional misconduct or fraud or money laundering and which data concerning punishment have not been cancelled from the punishment register according to the Punishment Register Act or the punishment is valid in accordance with the legal acts of its country of residence or location;
- 2) which is bankrupt or under liquidation, which business activities have been suspended or which is in other similar state according to the legislation of its country of location, excluding purchase of goods pursuant to the case and terms stipulated in clause 4 of subsection 4 of § 28;
- 3) as to which compulsory liquidation or other similar procedure has been started according to the legislation of its country of location;
- 4) which has not fulfilled the obligations of payment of state taxes, local taxes of the location of the contracting authority or of its own residence or location or social insurance payments in accordance with the legal acts or which has had tax arrears

within the last 12 months prior to submission of the relevant certificate to the contracting authority in total of more than within 30 days.

- 5) which has submitted the joint tender in the same public procurement or concerning the same lot in case of the public procurement divided into lots within one procurement procedure, having at the same time submitted the tender alone, several joint tenders with different other joint tenderers or names the other tenderer in performing the public contract as the subcontractor;
- 6) which has submitted false data on the compliance with the requirements established by the contracting authority in this title or based on the terms stipulated in this title.

(2)The contracting authority may exclude the tenderer or candidate from the procurement procedure:

- 1) as to which or which representative is guilty of grave professional misconduct concerning the professional or occupational behavioural rules proven with the decision of the court of honour of occupational or professional association or on any other similar basis;
- 2) which has not submitted the data or documents regarding the absence of the bases of exclusion of the tenderer or the candidate from the procurement procedure required by the contracting authority, provided these data or documents are not available through the public register without major expenses;
- 3) which has not notified the contracting authority of the significant changes regarding the circumstances mentioned in subsection 1 of this section;
- 4) which tender has been prepared with the participation of the person which has participated in preparing the contract documents of the same public procurement or which has in some other way related to the contracting authority and the information known to that person provides it the preference before other tenderers;
- 5) which has paid the social tax and social insurance payments per employee within the last year in the lower amount than 70 percent of the sum of social tax and social insurance payments paid per employee on the average salary of its country of location and region in the relevant field.

(3) The contracting authority shall require from the tenderer or candidate together with documents proving its qualification or separately:

- 1) submission of written confirmation of the absence of the circumstances mentioned in clauses 1-3 of subsection 1 of this section;
- 2) submission of the certificate of the Tax and Customs Board and the tax authority of the country of location of the tenderer or candidate or the local tax authority of the tenderer or candidate with the relevant competence on the absence of the fact mentioned in clause 4 of subsection 1 of this section or in case the administrative agency of the relevant competence of the country of location of the tenderer or candidate is not issuing the certificate with such content, the certificate of this administrative agency on the absence of the tax arrears.

(4) The contracting authority shall require the submission of the written confirmation of the tenderer together with the tender that the subcontractors participating in the direct performance of the public contract on the basis of the subcontract have no bases mentioned in the subsections 1 and 2 of this section.

(5) Provided the contracting authority has justified doubts that the bases mentioned in clauses 1-4 of subsection 1 of this section occur by the tenderer, candidate or the subcontractor of the tenderer, it could require the relevant notice of punishment register on the absence of the mentioned bases from the tenderer or candidate or the equivalent document issued by the court or administrative authority of the country of location of the tenderer, candidate or the subcontractor of the tenderer or any other certificate issued by the administrative agency authorised for that purpose or written authorization of the tenderer, candidate or the subcontractor of the tenderer for turning to the relevant administrative agencies for receiving the confirmation on the absence of mentioned bases. Provided the country of location of the tenderer or the candidate or the subcontractor of the tenderer issues no such documents, it could be replaced by the testimony given under oath by the tenderer, candidate or the subcontractor planned by the tenderer or by its representative or with the testimony given



before the competent legal or administrative agency or notary or occupational or professional association according to the legal acts of the country of location of the tenderer, candidate or subcontractor of the tenderer.

(6) The contracting authority shall require the submission of the power of attorney given to their representative with the documents submitted for the proving of their qualification from the joint tenderers or joint candidates.

(7) By excluding the tenderer or candidate from the procurement procedure on the bases stipulated in this section the contracting authority shall make the relevant justified written decision.

### **§ 39. Verification of qualification of the tenderer and candidate**

(1) The contracting authority must verify that the economical and financial standing of the tenderer or candidate and the technical and professional ability comply with the qualification criteria provided in the contract notice. The qualification criteria must be sufficient for proving the ability of proper fulfilment of the public contract by the tenderer or candidate and relevant and proportional with the nature, quantity and purpose of the goods, services or public works that are the objects of the public contract.

(2) Provided the contracting authority has divided the public procurement into lots within the procurement procedure and has set different qualification criteria as to different lots, it verifies separately the compliance of the economic and financial standing and technical and professional ability of tenderers or candidates having submitted the tender or the request to participate in the procurement procedure with the qualification criteria provided in the contract notice separately. The contracting authority may establish for qualification of such tenderer or candidate which submits tender or the requests to participate in the procurement procedure as to more than one lot, higher qualification criteria for the summed indicators proportionally with the estimated value of lots.

(3) The contracting authority is entitled to verify the qualification of tenderer or candidate within the whole procurement procedure and if the fact is disclosed that the economic and

financial standing or technical and professional ability of the tenderer or candidate do not comply with the qualification criteria provided in the contract notice, make a new decision on the qualification of the tenderer or candidate and leave the tenderer or candidate unqualified.

(4) The contracting authority may require the explanation of the content of documents submitted for verification of qualification from the tenderer or candidate or submission of additional documents.

(5) The contracting authority may not leave the tenderer or candidate unqualified on the grounds that it has no earlier public contracts for the purposes of § 4 of this act.

(6) The contracting authority shall make a relevant written grounded decision on the qualification or non-qualification of the tenderer or candidate.

(7) Unqualified tenderer or candidate shall not participate in the further procurement procedure.

#### **§ 40. Economic and financial standing of the tenderer and candidate**

(1) In order to verify the compliance of the economic and financial standing of the tenderer or candidate with the qualification criteria the contracting authority shall require the submission of one or several following documents specified in the contract notice:

- 1) appropriate statements from bank or any other relevant document accepted by the contracting authority which proves the existence of the financial means at the disposal of the tenderer or candidate needed to guarantee the performance of the public contract;
- 2) annual reports or extracts from the annual reports of up to three years, if the annual reports are public according to the legal acts of the country of location of the tenderer or candidate;
- 3) data on the net sales of the whole business activities of the tenderer or candidate or on the net sales in the field related to the public contract or in part corresponding to the object of the public contract within up to three financial years according to their availability.

(2) The contracting authority may require the submission of the professional liability insurance certificate or any other relevant document accepted by the contracting authority from the tenderer or candidate which indicates that the tenderer or candidate has the means needed for the compensation of loss that may incur with the possible violation of the public contract or it has a possibility to receive these.

(3) ) If necessary and relevant for proving of qualification of the tenderer or candidate, they may prove their compliance with the requirements set for their economic and financial standing within the performance of the particular public contract in addition to its own indicators also on the basis of the means of another person, if it proves to the contracting authority in acceptable way that this person has the means necessary for performance of the public contract and corresponding to the object of the public contract in its disposal and the tenderer or candidate may use the relevant means of that person, if needed, for performance of the public contract.

(4) ) The joint tenderers and joint candidates for proving the compliance with the qualification criteria of their economic and financial standing. may rely on summed indicators of all joint tenderers or joint candidates in case of the summed up indicators

(5) Provided the tenderer or the candidate is unable to submit the documents required in the contract notice by the contracting authority for good reason, it may describe its economic and financial standing with the documents accepted by the contracting authority, provided that the tenderer or the candidate will not be placed into a better situation compared with other tenderers or candidates.

#### **§ 41. Technical and professional ability of tenderers and candidates**

(1) In order to verify the compliance of technical and professional ability of the tenderer or candidate with the qualification criteria the contracting authority shall require the submission of one or several of the following data and documents in the contract notice according to the nature, quantity and usage method of services or public works contracted and goods purchased on the basis of the public contract:

- 1) the list of the public works in accordance with the properties specified by the contracting authority, carried out up to the last five years which reflects the value, date

and site of all substantial works carried out, among them contracted by public procurement at their expediency and availability and the certificates specifying these were completed according to the rules of the awarded contracts and generally accepted good practice.

- 2) the list of principal supplies of goods and services provided in accordance with the properties specified by the contracting authority provided up to the last three years, among them including their value, dates of conclusion and information on other parties of the contracts at their existence and expediency;
- 3) the data on the technicians or technical bodies of the tenderer or candidate, especially those responsible for quality control regardless of whether or not belonging directly to the staff of undertaking of the tenderer or candidate or act by sub-contracting; in case of works contract the data of the persons or technical bodies responsible for carrying out the public works;
- 4) a description of the means and measures for monitoring and analysing the quality of the work and technical equipment used for ensuring quality by the tenderer or candidate;
- 5) the data on the experience, education and professional qualifications of the tenderer or candidate or its managerial staff and of the persons responsible for rendering services or managing of relevant public works;
- 6) the environmental management measures, if appropriate, applied for performance of the public contract in case of the works or service contract;
- 7) in case of service or works contract the average number of the employees, members of the management board of the tenderer or candidate and the persons employed in the undertaking on other contractual basis in the last three years;
- 8) confirmation of the tenderer on the existence of the tools or vehicles, plant and technical equipment or the existence of the relevant written statement for the acquisition or taking into use of necessary equipment which could be used by the tenderer or candidate in performing the public contract;
- 9) in case of service contract an indication of the proportion of the public contract which the tenderer or candidate intends possibly to subcontract;

10) samples, descriptions or photographs of the goods that are the object of the public contract, the authenticity of which must be certified if required;

11) certificates drawn up by technical control or supervisory agencies attesting the conformity of goods clearly identified by references to technical regulations or standards.

(2) Provided the estimated value of the public contract is equal to the international threshold or exceeds it, the contracting authority shall always require the information mentioned in clauses 1 or 2 of subsection 1 of this section among other things in the contract notice.

(3) Provided the special requirements have been established in the legal acts for the activity to be carried out on the basis of the public contract, the contracting authority controls whether the tenderer or candidate has such activity licence or registration or whether it belongs to the relevant organization according to the legal acts of the country of its location, requiring, if needed, such certificate from the tenderer or candidate, if these data are not available through the register to the contracting authority without major expenses.

(4) The following will be attached to the list mentioned in clause 2 of subsection 1 at the request of the contracting authority on the proper performance of the principal contracts:

1) the certificate issued by other contracting party, provided the other party of the contract is the contracting authority mentioned in clauses 1-3 of subsection 1 of § 10 of this act;

2) the confirmation of the other party or the written confirmation of the tenderer or candidate , provided the other party is the legal person governed by private law or physical person.

(5) Provided the goods or services that are the object of the public contract are complex or with special purpose, the contracting authority or competent official body of the country in which the supplier or service provider is established carries out a check upon the agreement with the contracting authority on the production possibilities or technical ability of the tenderer or candidate and, if needed, also on the possibilities of carrying out the scientific and research work and the quality control measures applied.

(6) Where needed and appropriate for attesting the qualification of the tenderer or candidate , the tenderer or candidate may prove the compliance of technical and professional ability with

the qualification criteria in the context of the performance of the specific public contract on the basis of the relevant indicators of the other persons to the means and measures or specialists, regardless of the legal nature of the links which it has with this person. For that purpose it has to prove by the way acceptable to the contracting authority that this person has relevant means and measures or specialists and the tenderer or candidate can use them, if needed, for performance of the public contract.

(7) The joint tenderers or joint candidates may rely on the competence of other joint tenderers or joint candidates in proving the conformity of their technical and professional ability with qualification criteria, provided this is possible resulting from the nature of the relevant criterion.

(8) Provided the object of the supply contract is in addition to the goods also their delivery or installation or the involved services or public works, the contracting authority may verify the qualification of the tenderer or candidate or the other person mentioned in subsection 6 of this section for the provision of these services or carrying out the public works in particular with regard to the technical and professional ability of this person.

(9) When the contracting authority requires the submission of the certificates of independent bodies in the contract notice attesting the compliance of the tenderer or candidate with certain quality assurance standards, refers to the quality assurance systems based on the relevant European standards series certified by the bodies conforming to the European standards series concerning certification. The contracting authority shall recognise the equivalent certificates from the bodies established in other Member States and accept other evidence of equivalent quality assurance measures submitted by the tenderer or candidate.

(10) Provided the contracting authority requires the submission of the list of environmental management measures applied on the basis of clause 6 of subsection 1 of this section in the contract notice, it shall refer to the Eco-Management and Audit Scheme (EMAS) of the European Union or to the EU legal acts based on the relevant European or international standards handling certification or to the environmental management standards based on the relevant European or international standards certified by the relevant bodies. The contracting authority shall recognise equivalent certificates from the bodies established in other EU

Member States and shall accept other evidence of equivalent environmental management measures submitted by the tenderer or candidate.

#### **§ 42. Official list of approved undertakings and certification of undertakings**

(1) The person registered in the official list of approved undertakings or certified as the approved undertaking may submit the certificate of the keeper of the official list of approved undertakings for proving its qualification in the procurement procedure on entering it to the list or the certificate of the accredited certification institution on its certification as the approved undertaking. The mentioned certificates indicate the data, on the basis of which the person was entered to the list or the certificate was issued to the person and the classification given to it in the list.

(2) The certificate issued by the keeper of the official list of the undertakings approved in Estonia or in another Member State of the European Union on registering of the person to the official list of the approved undertakings or the certificate of the competent certification body on its certification as the approved undertaking proves to the contracting authority the compliance of the person with the qualification criteria stipulated in § 38-41 regarding these data which were the bases for certification or registering the person in the list. The mentioned proof or certificate certifies the compliance of the person with the criterion set by the contracting authority in case the criterion being the basis of certification was equal to or higher of the criterion established by the contracting authority.

(3) In addition to the data which were not the basis for registration of the person into the list or certification, the contracting authority may require additional certificate from the candidate or tenderer besides the certificate mentioned in subsection 4 of this section on the payment of local national or local taxes or social insurance payments in its country of location.

(4) The contracting authority applies the subsections 2 and 3 of this section only regarding the tenderer or candidate, the location of which is in the Member State of the European Union which has established the procedure for creating and keeping the official list of approved undertakings or the procedure for certifying the approved undertakings.

(5) The Government of the Republic establishes the procedure of creating, keeping and updating of the official list of approved undertakings of the specific field or the procedure for certification of the approved undertakings upon the motion of the minister responsible for the relevant field in Estonia.

(6) The keeper of the official list of the approved undertakings of the specific field is the ministry responsible for the relevant field. Upon the permission of the Government of the Republic the ministry may authorize the keeping of the official list of approved undertakings to another legal person with the administration contract.

(7) The keeper of the official list of approved undertakings or the certification body authorized for the certification of the approved undertakings may require the fee from the undertaking for the entering to the list or certification or updating of the certificate. The fee rates which are in accordance with the reasonable expenses of relevant operations of the keeper of the list or the certification body are established by the Government of the Republic.

(8) By establishing of the conditions of registration in the official list of approved undertakings or certification requirements only the stipulations of § 38-41 of this act shall be taken into account.

(9) For any registration in the official list of approved undertakings of the persons whose country of location is any other Member State of the European Union no other data nor certificates are required in their certification other than those requested from the persons whose location is in Estonia.

(10) The keeper of the official list of approved undertakings or the certification body authorized for the certification of the approved undertakings may not refuse from the registration of the undertaking in the list or certification without basis.

(11) The competent certification body for the purposes of this act is the institution corresponding to the European certification standards.



## **Title 4**

### **Tender, its submission, opening and evaluation**

#### **§ 43. Tender**

(1) The tender is the expression of will of the tenderer for the award of the public contract which is binding for the tenderer from the date of submission of tenders up to at least the termination of the minimum validity date of the tender fixed in the contract documents.

(2) The tender should comply with the terms stipulated in the contract notice, contract documents and, if the separate tender invitation is submitted pursuant to the procedure stipulated in this act, the terms stipulated in this invitation.

(3) The joint tender of joint tenderers should include the confirmation that the joint tenderers are solidarily liable for the performance of the public contract.

(4) The tender is confidential. The information included in the tender may be disclosed only in the cases and within the scope stipulated in this act.

#### **§ 44. Submission of tender**

(1) The tender is submitted in writing in the closed package and marked or in electronic form according to the requirements stipulated in this act and legal acts established based on the latter.

(2) The tenderer may withdraw the tender prior to the date of submission of tenders by submitting the relevant notice in the same form with the tender to the contracting authority.

(3) If the tenderer submits the new tender within the term of submission of tenders, the tenders previously submitted by it will not become invalid therefore without the notice stipulated in subsection 2 of this section.

(4) Provided the contracting authority has allowed to submit alternative solutions, the tenderer may submit the tender with alternative solutions.

(5) The tenderer may not submit the joint tender, if it submits the tender alone or if it submits the joint tender with other joint tenders. The tenderer may not submit the tender, if it has given consent to the other tenderer to name oneself the subcontractor in the tender in performing the public contract.

(6) The contracting authority immediately submits the confirmation on the receipt of the tender to the tenderer at its request.

#### **§ 45. Extension of the validity period of the tender**

(1) The tenderer may extend the tender validity period on the written proposal of the contracting authority.

(2) The contracting authority is obliged to submit the proposal mentioned in subsection 1 of this section at least 10 days before the end of its tender validity period, if the procurement procedure has not terminated by that moment. The tenderer notifies the contracting authority of the extension of the tender validity period or its refusal within five working days from the receipt of the relevant proposal.

#### **§ 46. Opening of tenders**

(1) Tenders shall be opened at the place and time specified in the contract notice, contract documents or in the proposal to submit the tender by the contracting authority.

(2) In opening the tenders the contracting authority shall control the compliance of the submitted tenders indicated in the contract documents or in case of the competitive dialogue with the structure of tender and the list of documents and prepares the minutes of opening of tenders where the names of the tenderers are entered, registry codes and the values of the submitted tenders, including the instalments of tenders, if these will be considered in evaluation of tenders and the values of numerical indicators describing the tender compliant with the evaluation criteria of other tenders. In the minutes shall be also marked the information on which submitted tenders were not compliant with the provisions stipulated in the contract documents or in the proposal to submit the tender and the non-compliance reasons on the basis of the circumstances verified in opening.

(3) The contracting authority forwards the transcript of the minutes of opening the tenders to all tenderers within three working days from the opening of tenders. The contracting authority may submit the transcript of the minutes of opening the tenders to the tenderers with the

notice on the decision of declaring the tender successful or on the decision which is the basis for termination of the procurement procedure, if it forwards the information on the decisions made during the procurement procedure to the tenderers or candidates according to the provisions stipulated in subsection 4 of § 54 of this act and has notified of such possibility in the contract documents or in the proposal to submit the tender.

(4) The contracting authority enables the tenderers or their authorised representatives to stay by the opening of tenders.

(5) The contracting authority is not disclosing the content of the tenders in opening the tenders which violates the business secret of the tenderers or damages their mutual competition.

#### **§ 47. Verification of compliance of tenders**

(1) The contracting authority verifies the compliance of tenders submitted by the qualified tenderers which are opened pursuant to the procedure stipulated in § 46 with the terms provided in the contract notice and in the contract documents and in case the contracting authority submits the separate tender invitation pursuant to the procedure stipulated in this act, with the terms provided in this proposal and makes a grounded written decision on declaring the tenders suitable or on the rejection of tenders.

(2) The contracting authority rejects the tender, provided this is not compliant with the terms provided in the contract notice or contract documents or in case the contracting authority submits the separate tender invitation pursuant to the procedure stipulated in this act, with the terms provided in this proposal. The contracting authority may declare the tender suitable, provided this is not including the substantive deviations from the mentioned terms.

(3) The contracting authority rejects, inter alia, the tender which does not include the term required according to the stipulations of clause 9, subsection 2 of § 31 of this act.

(4) Provided the contracting authority has referred to the basis mentioned in subsection 1 of § 33 of this act in the technical specification of the object of public contract, it will not reject the tender in *awarding* the public supply or public service contract due to the non-compliance, provided the tenderer proves to the contracting authority in the acceptable way by using any

appropriate certificates that the offered solutions are equivalent with the requirements provided in the technical specification.

(5) Provided the contracting authority has prepared the technical specification of the object of the public contract pursuant to the procedure stipulated in subsection 3 of § 33 of this act based on the performance or functional requirements of the object of the public contract, it will not reject the tender, provided the offered public works, or services are compliant with some bases stipulated in clauses 1-7 of subsection 1 of § 33 which handles the performance or functional requirements that are the basis of the technical specification of the object of public contract and the tenderer proves this with the appropriate certificates in the way acceptable for the contracting authority.

(6) Provided the contracting authority has stipulated the pre-condition mentioned in subsection 6 of § 33 of this act in the technical specification of the object of public contract, it accepts relevant other proof submitted by the tenderer for the certification of the compliance of the factors having an impact on the environment being the basis for the technical description with the eco-label requirements.

(7) The appropriate certificate for the purpose of the subsections 4-6 of this section could be the technical dossier of the product or the test protocol of the approved body.

(8) Provided the contracting authority has divided the public procurement within one procurement procedure into lots, it controls the compliance of the tender submitted to each lot with the terms provided in the contract notice, contract documents in case the contracting authority submits the separate tender invitation pursuant to the procedure stipulated in this act, with the terms provided in this proposal.

(9) The tenderer whose tender has been rejected is not participating in the further procurement procedure.

(10) In case the contracting authority has divided the public procurement within one procurement procedure into lots and the tenderer has submitted the tender to more than one lot and the tender submitted to some lot has been declared suitable, the tenderer participates in further procurement procedure as to these lots.

(11) In case the tenderer has submitted more than one tender or more than one tender to the same lot of public procurement in case the latter has been divided into lots within one procurement procedure and any of the tenders submitted by it in this public procurement or to some lot has been declared suitable, it participates in further procurement procedure with the tenders declared suitable.

#### **§ 48. Tenders with abnormally low value**

(1) Provided the contracting authority finds that the value of tender is abnormally low compared to the estimated value of the public contract, the contracting authority should require the relevant written explanation from the tenderer in the written form. The tenderer is obliged to submit the written explanation to the contracting authority within five working days from the receipt of the relevant requirement.

(2) The low value of the tender in the explanation mentioned in subsection 1 of this section may be justified mainly by:

- 1) the economics of construction method, manufacturing process or the service provided;
- 2) the technical solution chosen by the tenderer or exceptionally favourable conditions which are available to the tenderer for the performance of the public contract;
- 3) originality of public works, goods or services;
- 4) protection of employees valid in the place of performance of public contract and with the terms regulating the work conditions;
- 5) with the possibility of tenderer to obtain state aid.

(3) The contracting authority shall verify the explanation submitted and shall evaluate the proof submitted, also by consulting with the tenderer, if needed. Provided the contracting authority still finds that the value of tender is abnormally low or when the tenderer submits no required explanation to the contracting authority, the contracting authority may reject the tender on the basis of the reasoned written decision.

(4) Provided the contracting authority establishes that the value of tender is abnormally low, as the tenderer has obtained state aid, it may reject the tender only after the tenderer is not able to prove within the reasonable term specified by the contracting authority that the state aid given was in accordance with the legal acts. Provided the contracting authority rejects the tender on this basis and the estimated value of public contract is equal to the international threshold or exceeds it, it notifies the European Commission of it through the Ministry of Finance.

#### **§ 49. Rejection of all tenders**

(1) The contracting authority may make a reasoned written decision on rejection of all tenders, provided:

- 1) the values of all tenders declared suitable significantly exceed the estimated value of public contract or
- 2) the contracting authority has stipulated the possibility of rejection of all tenders and the relevant objective and non-discriminatory basis in the contract documents and this basis has been fulfilled.

(2) Provided the contracting authority has divided the public procurement within one procurement procedure into lots, it may make a decision on the rejection of all tenders:

- 1) as to this lot, on the tenders submitted to which any basis stipulated in subsection 1 of this section exists;
- 2) as to these lots, the award of public contract as to which is inexpedient or is not compliant with the objective of the public procurement set by the contracting authority without the award of the public contract as to this lot, regarding of which any bases of termination of procurement procedure stipulated in clauses 2-7 of subsection 3 of § 29 exist.

#### **§ 50. Evaluation of tenders and declaration of tender successful**

(1) The contracting authority evaluates the tenders declared suitable. The contracting authority considers the criteria of evaluation of tenders stipulated only in the contract notice, contract documents or tender invitation in evaluation of the tenders.

(2) Provided the contracting authority awards the public contract based on the most economically advantageous tender, it evaluates the tenders according to the relative share assigned to the evaluation criteria related to the object of the public contract mentioned in the contract notice or contract documents. The contracting authority declares the most advantageous tender successful with the reasoned written decision according to the tender evaluation criteria.

(3) Provided the contracting authority awards the public contract on the basis of the tender with the lowest price, it evaluates the tenders only proceeding from their value and declares the tender with the lowest price successful with the reasoned written decision.

(4) Provided the contracting authority has divided the public procurement into lots within one procurement procedure, it evaluates the tenders and declares the tenders successful in lots.

(5) In case the unit prices provided in the tenders are the basis for the payable fee on the basis of the public contract and the obvious calculation error occurs as to the value of the tender and the calculated total value is not compliant with the value calculated on the basis of the unit prices provided in the tender, the contracting authority corrects the calculation error by calculating the value of the tender on the basis of the unit prices provided in the tender and notifies in writing the tenderer immediately of it. The tenderer responds to the contracting authority in writing within two workdays beginning from the receipt of the relevant notice whether it agrees with the correction of the calculation error. If the tenderer disagrees with the correction of the calculation error, the contracting authority rejects the tender.

## **§ 51. Electronic auction**

(1) Electronic auction is the final stage of tender evaluation for finding out the successful tender, during which the contracting authority evaluates and compares the quantitatively measurable values of the terms provided in the tenders in the electronic environment pursuant to the procedure stipulated in this section.

(2) In case of open and restricted procedure and in case of negotiated procedure with prior publication of a contract notice in case mentioned in clause 1 of subsection 2 of § 27 of this

act the contracting authority may organise the electronic auction on the condition the object of the public contract can be precisely described. As a result the electronic auction may not be organised in contracting for services or awarding the public works contracts, the object of which is the intellectual activity, e.g. planning of public works.

(3) Electronic auction may be used also for the award of public contract in organising the competition between the tenderers which are the parties of the framework agreement and in case of dynamic purchasing system.

(4) The electronic auction shall be based:

- 1) solely on prices of tenders, provided the contracting authority awards the public contract based on the tender with the lowest price or
- 2) on the prices of tenders or other numerically expressed criteria of tender evaluation, provided the contracting authority awards the public contract based on the most economically advantageous tender.

(5) The contracting authority notifies of the organising of electronic auction in the contract notice.

(6) Prior to starting the electronic auction the contracting authority controls the compliance of the tenders with the terms stipulated in the contract documents and in case it awards the public contract on the basis of the most economically advantageous tender, evaluates the tenders prior to starting the auction proceeding from the evaluation criteria of tenders and their relative weight.

(7) The requirements of organising the electronic auction for the usable equipment and conduct procedure are established by the Government of the Republic.

(8) In the course of the electronic auction no requirements stipulated in subsection 5 of § 55 of this act are applied to the submission of the tenders, provided the Government of the Republic is not establishing the relevant requirements on the basis of subsection 7 of this section.



## **§ 52. Evaluation of alternative solutions**

(1) The contracting authority evaluates the alternative solutions, provided it awards the public contract on the basis of the most economically advantageous tender and has allowed to submit the tenders with alternative solutions in the contract notice.

(2) The contracting authority evaluates only these alternative solutions which comply with the requirements established for the alternative solutions in the contract documents and which have been declared suitable based on these requirements.

(3) The contracting authority may not reject the alternative solution provided in the tender with the reason that in awarding the public contract on terms provided in the alternative solution the public service contract instead of public supply contract would be dealt with or vice versa.

## **§ 53. Continuation of procurement procedure in case of waiver of the tenderer having submitted the successful tender from the public contract award**

(1) Provided the tenderer having submitted the tender declared successful withdraws its tender due to the reasons not resulting from the contracting authority:

1) the contracting authority declares the second-best tender as to the price successful, if it awards the public contract on the basis of the tender with the lowest price;

2) provided the contracting authority awards the public contract on the basis of the most economically advantageous tender, it reevaluates all the remaining tenders according to the subsection 2 of § 50 and declares the tender successful which is the most advantageous of the tenders having been declared suitable according to the tender evaluation criteria stipulated in the contract notice, contract documents or tender invitation.

(2) In case stipulated in clause 1 of subsection 1 of this section the contracting authority has the right to require the loss compensation from the tenderer having withdrawn the tender declared successful regarding the difference of withdrawn tender and the next tender declared suitable.

(3) In case stipulated in clause 2 of subsection 1 of this section the contracting authority has the right to require the loss compensation from the tenderer having withdrawn the tender declared successful regarding all possible additional expenses which could be covered by the

contracting authority related to the award of public contract instead of withdrawn tender on the basis of this tender which was declared successful after the re-evaluation of tenders, also regarding the expenses resulting from the new evaluation of tenders.

(4) The tender security not returned to the tenderer is deducted from the loss stipulated in subsections 2 and 3 of this section.

## **Title 5**

### **Notification**

#### **§ 54. Notification of the tenderers and candidates of the decision**

(1) The contracting authority submits immediately, but not later than within three workdays, the written notice on each decision made within the procurement procedure which has an impact on its rights or obligations in the procurement procedure to the tenderers or candidates, including the decision of eliminating the tenderer or candidate from the tendering procedure, decision of qualifying the tenderer or, candidate, decision of leaving the tenderer or candidate unqualified, decision of rejection of tender, decision of rejection of all tenders, decision mentioned in subsection 4 of § 65 of this act, decision of declaring the tender suitable and decision of declaring the tender successful with the names of tenderers or candidates , as to whose or whose tender the relevant decision was made, also the reasons why the public contract or framework agreement was decided not to be awarded or restart the procurement procedure.

(2) Upon the request of the tenderer or candidate the contracting authority submits in writing within three workdays from the receipt of such application:

- 1) reasons of leaving them unqualified for the tenderer or candidate;
- 2) for the tenderer the reasons of rejection of its tender, including in cases when the decision was made according to which the tender is not equal for the purposes of subsection 2 of § 33 of this act or is not compliant with the performance or functional requirements set for the purposes of subsection 3;

3) to each tenderer having submitted the tender declared suitable data describing the successful tender and its advantages compared to its tender and the name of the tenderer or tenderers having submitted the tender declared successful.

(3) The contracting authority may leave the information of the notices mentioned in subsection 1 of this section unshared with the tenderers or candidates, the disclosure of which would hinder the work of the law enforcement authorities, would contradict the public interest or would violate the business secret of undertakings or would damage their mutual competition.

(4) The contracting authority may deviate from the terms stipulated in subsections 1 and 2 of this section by submitting the information mentioned in subsections 1 and 2 to the tenderers or candidates together promptly but no later than within five workdays from making the decision of declaring the tender successful or the decision which is the basis for the termination of the procurement procedure.

#### **§ 55. Rules applicable to communication and form requirements of documents**

(1) All communication and information exchange referred to in this chapter may be carried out by post, fax or personal delivery or by electronic mail, if not stipulated otherwise in this chapter. Any notice or other information submitted by the contracting authority based on the terms of this chapter is considered as submitted in time, provided the notice has been sent as required within the term stipulated for submitting.

(2) Communication means and electronic information forwarding means used by the contracting authority must be generally available and technically interoperable with the information and communication technology in general use and thus not restrict the participation of the interested persons in the procurement procedure without reason.

(3) Communication and exchange and storage of information should be carried out in a way which guarantees the integrity of data and the confidentiality of tenders, requests to participate in the procurement procedure and other documents and this that the contracting authority may open the tenders and the requests for participating in the procurement procedure and examine their content only after the expiry of the date of their submission.

(4) The information and technical requirements needed for the electronic submission of the tenders and requests to participate in the procurement procedure, including encryption, shall be available to the interested persons.

(5) In case of electronic submission of the tenders and requests to participate in the procurement procedure at least the following requirements should be met:

- 1) Electronic signatures should comply with the requirements stipulated in the Digital Signatures Act and in the legal acts of the Member State of the European Union established based on the framework of the community handling the electronic signatures of the directive 1999/93/EC of the European Parliament and Council (OJ L 13, 19 January 2000, pgs 12-20);
- 2) The precise time of receipt of tenders and requests to participate in the procurement procedure may be specified by the contracting authority;
- 3) It has been guaranteed that prior to the date of submission of tenders or requests to participate in the procurement procedure no one except their sender has an access to these documents;
- 4) Provided the access prohibition mentioned in clause 3 of this subsection is violated, this violation may be clearly established;
- 5) The time of opening the tenders or requests to participate in the procurement procedure may be specified or changed only by the persons appointed by the contracting authority;
- 6) In the course of the procurement procedure the persons appointed by the contracting authority have the access to the tenders and requests to participate in the procurement procedure only as a result of the simultaneous procedure and pursuant to the date specified by the contracting authority;
- 7) The data provided in the tenders and requests to participate in the procurement procedure will be accessible for only the persons appointed by the contracting authority.

(6) The requirements to the electronic submission of tenders and requests to participate in the procurement procedure shall be established by the Government of the Republic.

## **§56. Explanations**

(1) Each person participating in the procurement procedure and each interested person, who at the respective moment has the possibility to participate in the procurement procedure, has the right to receive explanations or additional information regarding the contract notice, contract documents and the tender invitation.

(2) The contracting authority shall submit the explanations regarding the contract notice, contract documents, tender invitation or additional information, the publication of which is considered possible by the contracting authority, to the person asking simultaneously for explanations or additional information, to all tenderers and candidates who have received the contract documents or tender invitation or to the interested persons who have received contract documents, who at the respective moment have a possibility to participate in the procurement procedure and discloses these with the contract documents. The contracting authority submits the mentioned information within three working days from receiving the respective request.

(3) The contracting authority may demand from the tenderer or the candidate justified explanation, delimitation or specification of the information presented in the tender or the explanations, data or documents mentioned in subsection 4 of § 39 of this act. The tenderer or candidate is obliged to submit the latter within three working days from the receipt of the relevant claim.

## **Title 6**

### **Open procedure**

#### **§ 57. Issue of contract documents in open procedure**

(1) In case of an open procedure the contracting authority shall make possible to all interested persons to extract contract documents at its location or electronically on the website according to the stipulations of the contract notice. In addition, the contracting authority may issue contract documents also by post in a written form and via e-mail in an electronic form. The contracting authority shall register all persons who have taken out contract documents. If the contracting authority enables to take out the contract documents through the website, the interested person should have a possibility to register oneself on the website as the person

having received the contract documents, by disclosing its contact data to the contracting authority.

(2) The contracting authority shall specify the date for submitting tenders proceeding from the object of the public contract, above all its complexity and quantity, volume or amount, considering the minimum dates stipulated in § 35 of this act.

(3) In case the contracting authority does not guarantee unlimited and full electronic access to the contract documents from publishing the contract notice in the register, it will submit the contract documents to the interested person within three working days from receiving the respective request.

#### **§58. Submission, opening and evaluation of tenders in open procedure**

(1) In case of an open procedure every interested person may submit a tender. Together with the tender also the documents are submitted verifying the qualification of the tenderer respectively to the requirements of the contract notice.

(2) The contracting authority shall open all tenders submitted in due date, check the qualifications of all tenderers according to the stipulations provided in this act and contract notice and the compliance of the tenders of qualified tenderers with the terms provided in the contract notice and contract documents and shall evaluate the tenders declared suitable according to the procurement procedure stipulated in this act.

(3) The contracting authority may not conduct negotiations in the course of the procurement procedure.

### **Title 7**

#### **Restricted procedure**

#### **§59. Candidates in restricted procedure**

(1) In case of a restricted procedure each interested person may submit a request to participate in the procurement procedure with the documents certifying the qualification of the candidate

as required in the contract notice. The request to participate in the procurement procedure is submitted in written form or in the electronic form in accordance with the requirements stipulated in this act and in the legal acts established on its basis. The contracting authority shall immediately submit a confirmation on receiving the request to the candidate at its request.

(2) In the contract notice the contracting authority may restrict the number of participating candidates in the procurement procedure, to whom it will present the invitation to tender by establishing the numerical lower limit in the contract notice, which may be a minimum of five and, if required, the upper limit and the objective and non-discriminatory criteria for the selection of those candidates.

(3) The contracting authority shall check the qualification of all candidates who have on time submitted the request to participate in the procurement procedure according to the terms stipulated in this act and in the contract notice.

#### **§60. Submission of tender invitation in restricted procedure**

(1) The contracting authority shall submit the tender invitation to all qualified candidates or, in case it has limited the number of candidates in the contract notice according to §59 (2), to at least the respective number of selected qualified candidates simultaneously. The tender invitation is submitted in written form or in the electronic form in accordance with the requirements stipulated in this act and in the legal acts established on its basis.

(2) Provided the number of qualified candidates is less than the numerical lower limit of candidates specified in the contract notice, the contracting authority may continue the procurement procedure by submitting the tender invitation to all qualified candidates.

(3) With the tender invitation the contract documents shall be forwarded or a reference to the web address, provided the contracting authority ensures unlimited and full electronic access to contract documents and a reference to the contract notice published in the register.

#### **§61. Opening and evaluation of tenders in restricted procedure**

(1) The contracting authority shall open all tenders and check their compliance with the terms provided in the contract notice, contract documents and tender invitation, and shall evaluate all tenders declared suitable according to the procurement procedure stipulated in this chapter.

(2) The contracting authority may not conduct negotiations in the course of the procurement procedure.

## **Title 8**

### **Competitive dialogue**

#### **§62. Candidates in competitive dialogue**

(1) In case of competitive dialogue each interested person may submit a request to participate in the procurement procedure with the documents certifying the qualification of the candidate as required in the contract notice. The request to participate in the procurement procedure is submitted in written form or in the electronic form in accordance with the requirements stipulated in this act and in the legal acts established on its basis. The contracting authority shall immediately submit a confirmation on receiving the request to the candidate at its request.

(2) The contracting authority may limit the number of candidates participating in the procurement procedure with which it has a dialogue by establishing a numerical lower limit that may be a minimum of three and at option the upper limit and the objective and non-discriminatory criteria for the selection of those candidates.

(3) The contracting authority shall check the qualifications of all candidates according to the stipulations of this act and the contract notice.

#### **§63. Dialogue**

(1) The contracting authority shall make to all qualified candidates or, in case it has limited the number of candidates in the procurement notice according to §62 (2) of this act, at least to the respective number of selected qualified candidates, simultaneously and in a format which



may be reproduced in writing a proposal to start a dialogue for finding out the solution that will satisfy the needs of the contracting authority the best.

(2) In case the number of qualified candidates is less than the numerical lower limit of candidates specified in the contract notice, the contracting authority may continue procurement procedure by making a proposal to start a dialogue to all qualified candidates.

(3) The proposal to start a dialogue specified in subsection 1 of this section must contain:

1) the description of the object of the public contract or a reference to the web address in case the contracting authority guarantees an unlimited and full electronic access to the description;

2) reference to the published contract notice;

3) time and place of starting a dialogue and the language or languages used;

4) the terms submitted to the participants in the dialogue on whether the contracting authority requires the transfer of the intellectual or other ownership of the solutions offered in the course of the dialogue, whether the offered solutions are available to other participants in the dialogue and whether the final tenders are submitted on the basis of one solution selected by the contracting authority or in the course of the dialogue on the basis of each solution offer by the candidate itself;

5) in case of giving the awards for the compensation of expenses related to working out the solutions offered in the course of the dialogue or in case of payment of participation fee its amount, payment terms and procedure.

(4) The contracting authority will not add these data to the description of the object of the public contract which resulting from the nature of the competitive dialogue may not be specified in making the proposal mentioned in subsection 1 of this section or over which the negotiations are held in the course of the dialogue.

(5) The contracting authority shall ensure the equal treatment of all candidates participating in the dialogue in the course of the dialogue. The contracting authority may not disclose information in a discriminatory manner nor to disclose in the course of the dialogue the solutions offered by the candidate nor any other confidential information to other candidates participating in the dialogue nor to the third persons without the consent of the candidate.

(6) In case the contracting authority has established such possibility in the contract notice, it may have the dialogue in successive stages, by reducing the number of solutions discussed in each stage. In case of existence of suitable solutions, the number of solutions discussed in the last stage must be sufficient to ensure competition.

(7) In the course of the dialogue all terms of the future public contract may be addressed.

(8) The contracting authority holds the dialogue with the candidates until finding the solutions most compliant with its needs.

(9) The solutions worked out in the course of the dialogue are entered to the minutes signed by the contracting authority and candidate.

(10) The contracting authority may give awards to the tenderers or pay participation fee for the compensation of expenses related to the working out the solutions offered in the course of the dialogue, the amount of which may be differentiated depending on the terms submitted on the suitability of the offered solution.

#### **§64. Submission of tender invitation and evaluation of tenders in case of competitive dialogue**

(1) Pursuant to the specification of the solutions most suited to its needs, the contracting authority shall notify all candidates participating in the dialogue of the termination of the dialogue and shall present them simultaneously the invitation to submit tenders on the grounds of solutions presented and specified in the course of the dialogue. The tender invitation must include these data mentioned in subsection 2 of §31 of this act which are needed to submit the tenders and appropriate implementation of the procurement procedure and which have not been mentioned in the contract notice. The tender invitation will be made in writing or in the electronic form according to the requirements stipulated in this act and legal acts established on its basis.

(2) The contracting authority shall open all tenders and shall check their compliance with the description and requirements of the object of the public contract which it has stipulated in the contract notice and tender invitation and shall evaluate all tenders declared compliant according to the procurement procedure established in this chapter.

(3) The contracting authority may not hold negotiations in the course of the procurement procedure pursuant to making the tender invitation.

## **Title 9**

### **Negotiated procedure with prior publication of a contract notice**

#### **§ 65. Starting the negotiated procedure with prior publication of a contract notice**

(1) In case of negotiated procedure with prior publication of a contract notice each interested person may submit the request to participate in the procurement procedure with the documents certifying the qualification of the candidate as required in the contract notice. The request to participate in the procurement procedure is submitted in written form or in the electronic form in accordance with the requirements stipulated in this act and in the legal acts established on its basis. The contracting authority shall immediately forward a confirmation on receiving the request to the candidate at its request.

(2) The contracting authority may restrict the number of candidates participating in the procurement procedure, to which it submits the tender invitation by stipulating the relevant numerical lower rate in the contract notice which may be three as minimum and at option the upper limit and the objective and non-discriminatory criteria for selecting these candidates.

(3) The contracting authority controls the qualification of all candidates according to the terms stipulated in this act and contract notice.

(4) In case of clause 1, subsection 2 of § 27 of this act the contracting authority may continue the started procurement procedure with open procedure, restricted procedure or competitive dialogue as the negotiated procedure with prior publication of a contract notice without submitting the new contract notice for starting the negotiated procedure with prior publication of a contract notice nor recontrol the qualification of candidates when starting the negotiations on tenders with only these tenderers who were earlier qualified during the same procurement procedure and who submitted the tender compliant with the form requirements controlled in opening the tenders. In this case the contracting authority makes a reasoned written decision

on the substantive non-compliance of all tenders without rejecting them and on starting the negotiations over the tenders.

**§ 66. Submission of tender invitation in the negotiated procedure with prior publication of a contract notice**

(1) The contracting authority submits the tender invitation simultaneously to all qualified candidates or in case it has restricted the number of candidates in the contract notice according to subsection 2 of § 65, at least to the relevant number of qualified candidates. The tender invitation is submitted in written form or in the electronic form in accordance with the requirements stipulated in this act and in the legal acts established on its basis.

(2) Provided the number of qualified candidates is less than the numerical lower rate of the candidates mentioned in the contract notice the contracting authority may continue the procurement procedure by submitting the tender invitation to all qualified candidates.

(3) With the tender invitation contract documents shall be forwarded or relevant reference to the website, when the contracting authority guarantees the unrestricted and full electronic access to the contract documents and the reference to the contract notice published in the register. The contracting authority will not add these data mentioned in subsection 2 of § 31 of this act to the contract documents which as a result of the nature of the negotiated procedure with prior publication of a contract notice may not be specified at the moment of submitting the tender invitation or over which are negotiated during the procurement procedure.

**§ 67. Opening of tenders and holding negotiations in the negotiated procedure with prior publication of a contract notice**

(1) The contracting authority opens all tenders, except in case stipulated in subsection 4 of § 65 of this act, and holds negotiations with the tenderers regarding the tenders to adjust these, if needed, with the requirements stipulated in the contract notice and contract documents and select the successful tender.

(2) During the negotiations the contracting authority guarantees the equal treatment of all tenderers. The negotiations are confidential. The contracting authority is not disclosing the

information regarding the tenders received during the negotiations in the discriminatory way which could provide an advantage to one tenderer before the others.

(3) Provided the contracting authority has stipulated this possibility in the contract notice or contract documents, it could organise the negotiations as successive stages by decreasing the number of tenders negotiated over in each stage. In case of existence of appropriate tenders the number of tenders negotiated over in the last stage should be sufficient for ensuring the competition.

## **Title 10**

### **Negotiated procedure without publication of a contract notice**

#### **§ 68. Procedure of negotiated procedure without publication of a contract notice**

(1) In case of negotiated procedure without publication of a contract notice the contracting authority submits the contract documents to one or several interested persons whose economic and financial standing and technical and professional ability are presumably sufficient for proper performance of the public contract.

(2) The contracting authority will not add these data mentioned in subsection 2 of § 31 of this act to the contract documents which as a result of the nature of negotiated procedure without publication of a contract notice could not be specified at the moment of submission of contract documents or which are negotiated over during the procurement procedure.

(3) The contracting authority submits the qualification terms with the contract documents and the requirements of submission of documents certifying the qualification to the interested person and controls the qualification of the person according to the stipulations in this act and the provided qualification criteria prior to starting the negotiations over the terms of the public contract.

(4) The contracting authority holds negotiations over the terms of public contract with the interested persons having received the contract documents to award the public contract according to the provisions stipulated in subsections 2 or 3 of § 50 of this act.

## **Title 11**

### **Award and amendment of the public contract**

#### **§ 69. Award and amendment of the public contract**

(1) The contracting authority is not allowed to give the consent for the award of the public contract prior to passing of 14 days from the forwarding of notice on the decision on declaring the tender successful, except in case of negotiated procedure without publication of contract notice or in case the tender was submitted by only one tenderer in other type of procurement procedure. The public contract awarded prior to expiry of the mentioned date is void.

(2) The parties of the public contract may draw up the public contract as a separate document.

(3) The contracting authority may agree in amendment of the awarded public contract only in case the amendment is due to the objective circumstances which could not be anticipated by the contracting authority during the award of the public contract and in case of leaving the public contract unchanged, the achievement of the objective set with the public contract would be fully or in material part in danger.

(4) The contracting authority may not agree in amending the public contract, if the objective applied for with amendment could be achieved with the award of the new public contract.

(5) The violation of the requirements stipulated in the subsections 3 and 4 of this section has no impact on the validity of the public contract.

(6) If the contracting authority has divided the public procurement into lots within one procurement procedure, it may award the public contract per each lot separately.

## **Title 12**

### **Framework agreements**

## **§ 70. Award of framework agreement**

- (1) The contracting authority may award the framework agreement with the term of up to four years. The longer date is allowed in case this is objectively necessary and grounded resulting from the object of the framework agreement.
- (2) The contracting authority should not award the framework agreement in order to preclude, limit or distort competition.
- (3) The framework agreement is awarded as a result of the procurement procedure organised pursuant to the procedure stipulated in this chapter. The tenders to which the consent for the award of the framework agreement is given are chosen according to the procedure for evaluation of tenders stipulated in § 50 of this act based on the sequence of advantage.
- (4) The framework agreement is awarded, if possible, with at least three tenderers, provided the sufficient number of qualified tenderers submit the tender compliant with the requirements stipulated in the contract documents.

## **§ 71. Award of public contracts based on the framework agreement**

- (1) The terms resulting from the framework agreement should be proceeded from in awarding the public contracts based on the framework agreement and the procedure stipulated in this section. If the terms of the public contracts awarded on the basis of the framework agreement differ from the terms in the framework agreement, the terms of the public contract should be more advantageous than the terms stipulated in the framework agreement for the contracting authority, above all the unit cost of the object of the public contract could be lower than the unit cost stipulated in the framework agreement.
- (2) On the basis of the framework agreement awarded with one tenderer by the contracting authority, the public contracts are awarded within the terms stipulated in the framework agreement. The contracting authority may hold negotiations with the tenderer in awarding the public contracts in the format which may be reproduced in writing or in the same form as recorded as minutes and ask the tenderer to complete the tender, if needed.
- (3) Provided all terms of public contracts to be awarded on the basis of the framework agreement the contracting authority of which has awarded with more than one tenderer, the public contracts will be awarded in the terms stipulated in the framework agreement.

(4) Provided not all terms of public contracts to be awarded on the basis of the framework agreement the contracting authority of which has awarded with more than one tenderer, the contracting authority awards the public contracts on the basis of the framework agreement on the basis of the following procedure:

- 1) The contracting authority holds negotiations with all tenderers that are the parties of the framework agreement in the written form or as recorded in the minutes;
- 2) The contracting authority provides the reasonable date for the tenderers that are the parties of the framework agreement to submit the tenders for the award of the public contract on the basis of the framework agreement, considering the complexity of the object of the public contract and the time needed for the submission of tenders;
- 3) The tenderers that are the parties of the public contract submit the tenders in the written form to the contracting authority, the content of which is confidential up to the expiry of the date mentioned in clause 2 of this subsection;
- 4) The contracting authority awards the public contract with the tenderer based on the framework agreement who has submitted the most advantageous tender according to the terms of awarding the public contracts stipulated in the framework agreement.

(5) The contracting authority notifies the other tenderers that are the parties of the framework agreement of the award of the public contract on the basis of the framework agreement immediately but not later than within 3 working days from the award of the public contract.



## **Chapter 3**

### **PUBLIC WORKS CONCESSION**

#### **Title 1**

#### **Granting public works concession**

##### **§ 72. Notice of public works concession**

(1) When the contracting authority requires to award the public contract for granting the public works concession (hereinafter the *concession contract*) it should submit the notice of public works concession to the register.

(2) According to the terms stipulated in the notice of public works concession all interested persons are entitled to submit the concession application.

##### **§ 73. Date of submission of concession applications and public procurement report**

(1) The contracting authority sets the date for submission of concession applications which may not be less than 52 days from the publication of notice of public works concession in the register.

(2) Provided the total estimated value of the public works to be carried out on the basis of the public works concession is equal to the threshold of the public procurement or exceeds it, but is lower of the international threshold, the date mentioned in subsection 1 of this section should be at least 22 days.

(3) Provided the contracting authority submits no information needed for submitting the concession applications within reasonable period from the receipt of relevant application or when it has been submitted at least six days before the date of submission of concession application or when the concession applications may be submitted only pursuant to the examining the place of performing the concession contract or the control of technical documents on site, the contracting authority extends the date of submitting the concession applications in case of the arising need so that the interested persons may obtain all information needed for submitting the concession application.

(4) The contracting authority submits the public procurement report to the register within ten days pursuant to the award of the concession contract.

#### **§ 74. Subcontracting**

(1) The contracting authority may require that:

- 1) the concessionaire would award the public contracts with the subcontractors based on the concession which include at least 30 percent of the total estimated value of the public works carried out based on the public works concession, by giving the possibility to increase this rate to the concession candidate or
- 2) the concession candidate would indicate in the concession application to how large extent of the estimated total value of the public contracts to be awarded based on the public works concession the concession candidate intends to award the subcontracts.

(2) The contracts which have been awarded by the concessionaire with the undertaking related to it or with another person having submitted the joint concession application with it are not considered among the subcontracts mentioned in subsection 1 of this section.

(3) The connected undertaking for the purposes of this section is any undertaking over which the concessionaire has a dominant influence, whether directly or indirectly, or any undertaking which has a dominant influence on the concessionaire or which, together with concessionaire, is under the dominant influence of third person as a result of ownership, financial participation, legal act or on other basis. A dominant influence over an undertaking is presumed when, directly or indirectly in relation to another undertaking, it holds a majority of the undertaking's share capital, controls a majority of the votes based on the shares or has a power to appoint more than half of the members of the undertaking's management or supervisory body.

(4) The concession candidate shall add the full list of the undertakings related to it to the concession application. The concessionaire shall update this list pursuant to each next change in the inter-undertaking relation and shall submit the amended list immediately to the contracting authority.

### **§ 75. Contracting for additional public works from the concessionaire**

The contracting authority is not obliged to apply the procedure stipulated in this act, when it contracts for additional public works occurred necessary due to the unforeseeable circumstance for carrying out the public works described in the concession contract or project, not included in the initial concession contract, within up to 50 percent of the value of initial concession contract, provided such additional public works could neither be technically nor economically separated without incurring major costs for the contracting authority or additional public works are unavoidably necessary for performing the initial concession contract.

## **Title 2**

### **Award of public works contract based on the public works concession**

#### **§ 76. Award of public works contract by the concessionaire that is not a contracting authority based on the public works concession**

Provided the concessionaire that is not the contracting authority for the purposes of § 10 of this act requires to award the public works contract on the basis of the concession, the estimated value of which is equal to the threshold of the public procurement or exceeds it, it should follow the procedure stipulated in § 78, if not stipulated otherwise in § 77.

#### **§ 77. Specifications of award of public works contract by the concessionaire that is not the contracting authority based on the public works concession**

(1) The concessionaire is not obliged to apply the terms stipulated in § 76 in awarding the public works contract based on the public works concession, provided any terms for application of negotiated procedure without publication of a contract notice stipulated in § 28 of this act have been met.

(3) The concessionaire is not obliged to apply the terms stipulated in § 76 based on the public works concession in awarding the works contract with the connected undertaking or the other person having submitted the joint concession application with it.

#### **§ 78. Procedure for public works contract award by the concessionaire that is not the contracting authority based on the public works concession**

(1) The concessionaire submits the contract notice to the register for awarding the public works contract based on the public works concession.

(2) The concessionaire determines the date of submission of tenders or the requests to participate in the procurement procedure based on the complexity of public contract and the time period presumably needed for the preparing and submission of tenders based on the stipulations in subsections 3-9 of § 35 of this act.

(3) Provided the concessionaire guarantees no unlimited and complete electronic access to the contract documents from the publication of the contract notice in the register, the concessionaire submits the contract documents to the interested person within three working days from the receipt of the relevant request.

(4) The concessionaire submits the public procurement report to the register within ten days after the award of the public contract.

## **Chapter 4**

### **DESIGN CONTEST**

#### **§ 79. Types of design contest**

(1) The contracting authority may organise the design contest:

- 1) with the objective to award the public service contract with the winner of the design contest based on the conceptual design offered by it;
- 2) only for the receipt of conceptual design by giving the prizes to the winner or winners of the design contest or by paying the participation fees to the participants.

(2) In case stipulated in clause 1 of subsection 1 of this section the contracting authority is entitled to award the public service contract with the winner of the design contest based on subsection 6 of § 28, if it is not excluding this possibility in the design contest notice and the estimated value of the public contract to be awarded has been included in the estimated value of the design contest according to the terms stipulated in subsection 5 of § 20.

#### **§ 80. Procedure of organizing the design contest**

(1) In order to start the design contest the contracting authority submits the invitation of design contest to the register.

(2) The contracting authority stipulates in the design contest notice, inter alia, whether it requires the transfer of the copyright or other ownership of the submitted conceptual designs from the winner of the design contest and other participants in the design contest or not.

(3) The contracting authority may restrict the number of participants at the contest by establishing the clear and non-discriminatory criteria for the selection of the participants. The number of invited participants should be sufficient to ensure the competition.

(4) The contracting authority may establish the professional qualification requirements for the participants at the design contest in case of practicality based on the objective criteria.

(5) The conceptual designs are assessed by the jury of the design contest.

(6) The contracting authority announces the participant having submitted the best conceptual design the winner of the design contest in the opinion of the jury. There can be one or many winners.

(7) The contracting authority submits the results of the design contest to the register within ten days pursuant to the announcement of the winner of the design contest.

#### **§ 81. Jury of the design contest**

(1) The contracting authority appoints the jury of the design contest for the evaluation of conceptual designs submitted at the design contest.

(2) The members of the jury of the design contest should be the natural persons independent of the participants at the design contest.

(3) Provided the contracting authority has established the requirements of professional qualification for the participants of the design contest, at least one third of the members of the jury of the design contest should have equivalent professional qualification.

(4) The jury of the design contest is independent in its decisions and opinions and proceeds only from the criteria stipulated in the invitation of design contest.

(5) Conceptual designs are anonymous up to the making of the decision by the jury.

(6) The jury of the design contest prepares the minutes on its activities where the order of superiority of the evaluated conceptual designs, the prizes given to the winners of the design contest, participation fees paid to the participants, notes of the members of the jury and potential circumstances requiring additional explanation are entered. The jury may forward through the contracting authority the questions to the participants of the design contest regarding the circumstances requiring explanation entered to the minutes. The questions and

answers are entered to the minutes. The minutes will be signed by all members of the jury of the design contest.

## **Chapter 5**

### **PROCUREMENT PROCEDURE IN UTILITIES SECTORS**

#### **Title 1**

##### **Application of chapter**

##### **§ 82. Application of provisions**

The provisions of chapter 2 shall be applied to organising procurement procedure in utilities sectors pursuant to the procedure provided in § 15 of this act, unless otherwise provided by this act.

##### **§ 83. Operations in the sectors related to gas and thermal energy**

(1) For the purpose of this act, operations in the sectors related to gas and thermal energy shall be:

- 1) the operation of the fixed network intended to provide a service to the public in connection with the transfer or distribution of gas or thermal energy or with the production, transport or distribution of gas or thermal energy; or
- 2) the supply of gas or thermal energy to such networks.

(2) Provided the contracting authority, except the contracting authority mentioned in clause 1 of subsection 1 of § 10 of this act, supplies the networks providing the public service with gas or thermal energy, this shall not be considered the activity within the meaning of subsection 1 of this section if:

- 1) the production of gas or thermal energy by the contracting authority is the unavoidable consequence of carrying out an activity other than those referred to in sections 84 to 89 of this act or in this section; and

- 2) the public networks are supplied with gas or thermal energy of the contracting authority's own consumption surplus, aimed only at the economic exploitation of such production and amounts to no more than 20 % of the contracting authority's last three years average turnover.

#### **§ 84. Operations in the sectors related to electricity**

(1) For the purpose of this act, operations in the sectors related to electricity shall be:

- 1) the operation of the fixed network intended to provide a service in connection with the production, transfer or distribution of electricity to the public or
- 2) the supply of electricity to such networks.

(2) Provided the contracting authority, except the contracting authority mentioned in clause 1 of subsection 1 of § 10 of this act, supplies the networks providing the public service with electricity, this shall not be considered the activity within the meaning of subsection 1 of this section if:

- 1) the production of electricity by the contracting authority takes place because its consumption is necessary for carrying out an activity other than those referred to in sections 83 and 85 to 89 or in this section and
- 2) supply to the public network depends only on the contracting authority's own consumption and has not exceeded 30% of the contracting authority's total production of energy, having regard to the average of its last three years production of energy.

#### **§ 85. Operations in the sectors related to water**

(1) For the purpose of this act, operations in the sectors related to water shall be:

- 1) the operation of public water supply and sewerage systems intended to provide a service in connection with the production, transport or distribution of drinking water to the public,
- 2) the supply of drinking water to such public water supply systems.



- 3) hydraulic engineering projects, land irrigation or drainage works, if more than 20 percent of the total volume of the water received in the course of the mentioned projects, irrigation or drainage works are used for the supply of drinking water or
- 4) the discharges purification and processing of wastewater.

(2) Provided the contracting authority, except the contracting authority mentioned in clause 1 of subsection 1 of § 10 of this act, supplies the water supply facility providing the public service with drinking water, this shall not be considered the activity within the meaning of subsection 1 of this section if:

- 1) the production of drinking water by the contracting authority takes place because its consumption is necessary for carrying out an activity other than those referred to in sections 83 to 84 and 86 to 89 or in this section and;
- 2) supply to the public water supply systems depends only on the contracting authority's own consumption and has not exceeded 30% of the contracting authority's total production of drinking water, having regard to the average of its last three years production of drinking water.

#### **§ 86. Operations in the sectors related to transport services**

(1) For the purpose of this act, operation in the sectors related to transport services shall be the operation of networks or the provision of transport service by train, bus, tramway, trolley bus, automated systems or cableway to the public.

(2) A network shall be considered to exist within the meaning of subsection 1 of this section where the service is provided under operating conditions laid down by a competent authority authorized to do so under the legal acts, such as the list of the routes to be served, the capacity to be made available or the frequency of the service.

(3) The provision of bus transport services to the public within the meaning of subsection 1 of this section where other persons have the right to provide bus transport services in the same region and on the same conditions shall not be considered to be operation in the sector related to transport services within the meaning of this act.

## **§ 87. Operations in the sectors related to postal services**

(1) For the purpose of this act, operations in the sectors related to postal services shall be the provision of postal services or other services listed in subsection 4 of this section.

(2) For the purpose of subsection 1 of this section, postal services shall be the services consisting of the collecting, sorting, transporting and delivery of postal items to the recipients. These services include both reserved postal services and other postal services on the basis of article 7 of Directive 97/67/EC of the European Parliament and Council on the common rules handling the development of the domestic market of postal services of the community and improvement of the service quality (OJ L 15, 21 January 1998, pgs 14-25).

(3) A postal item within the meaning of subsection 2 of this section shall be an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value.

(4) Other services than postal services within the meaning of subsection 1 of this section, the provision of which is considered to be operation in the sectors related to postal services, are the services to be provided by the contracting authority rendering the postal services mentioned in subsection 2:

- 1) postal service management services: services both preceding and subsequent to despatch of postal item, such as post office service management services;
- 2) added-value services linked to and provided by electronic means, including the secure transmission of encrypted documents by electronic means, address management services and transmission of registered electronic mail;
- 3) services concerning postal items not included with the meaning of postal item within the meaning of subsection 3 of this section, such as direct mail bearing no address;
- 4) financial services, as defined in category 6 of Annex 2 A and within the meaning of clause 9 of subsection 1 of § 14 which include postal money transfer orders and non-cash settlements;
- 5) philately services;
- 6) logistics services combining physical delivery or warehousing with other non-postal functions.

**§ 88. Operations in the sectors related to surveys of mines and extraction of oil, gas, coal, oil shale, peat and other solid fuels**

For the purpose of this act, operations in the sectors related to surveys of mines and extraction of oil, gas, coal, oil shale, peat and other solid fuels shall be the exploitation of a geographical area for the purpose of exploring for the mines or extracting oil, gas, coal, oil shale, peat and other mineral resources used as solid fuels.

**§ 89. Operations in the sectors related to ports or airports**

For the purpose of this act, operations in the sectors related to ports or airports shall be the exploitation of a geographical area for the purpose of the provision of airport or port services to the undertakings of air or water transport.

**§ 90. Specifications concerning the scope of application of this chapter**

(1) A contracting authority is not required to apply the procedure provided for in this chapter to the following:

- 1) contracts awarded for purposes of resale or lease to third parties, provided that the contracting authority enjoys no special or exclusive right to sell or lease the object of such contract and other persons have the right to sell or lease it under the same conditions as the contracting authority;
- 2) contracts awarded for purposes of pursuing their activities as described in sections 83 to 89 in the territory of the country not belonging to the European Union in conditions not involving the physical use of a network or geographical area within a European Union member state;
- 3) contracts entered into with the undertaking related to the contracting authority;
- 4) contracts awarded to a legal person or civil law partnership which has been set up by the contracting authority who is a party to the contract and other contracting authorities in order to carry out the activity referred to in sections 83 to 89 over a period of at least three years and according to the articles of association or foundation resolution or contract of partnership the contracting authorities, which form it, will be the part thereof for at least the same period;

5) contracts awarded for the purposes of pursuing their activities as described in sections 83 to 89 if such activities are, on the conditions provided for in section 91, directly and with free access exposed to competition.

(2) A legal person or civil law partnership which has been set up by contracting authorities in order to carry out the activities referred to in sections 83 to 89 is not required to apply the procedure provided for in this chapter to contracts awarded to:

- 1) a contracting authority who has set up or is participating in it;
- 2) an undertaking related to the contracting authority which has set it up or is participating in it.

(3) The exception referred to in clause 3 of subsection 1 and clause 2 of subsection 2 of this section may be applied, provided that at least 80 % of the average turnover of the connected undertaking with respect to the provision of services, supply of items or performance of public works for the preceding three years derives from the provision of such services, supply of products or performance of public works to such contracting authorities or undertakings which are related to them. When, because of the date on which a connected undertaking was created or commenced activities, the turnover is not available for the preceding three years, it will be sufficient for that undertaking to show by other means, particularly by means of business projections, that the turnover is credible. Where more than one undertaking related to the contracting authority provides the same or similar services, products or public works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, products or public works by those connected undertakings.

(4) In case of implementation of exception referred to in clause 2 of subsection 1 of this section and in the case of contracts awarded for purposes other than the pursuit of an activity referred to in sections 83 to 89 the contracting authority shall notify in writing the European Commission, at the latter's request, through the Ministry of Finance of all such activities which are considered to be covered by the exclusion or the purpose.

(5) In case of implementation of the exceptions referred to in clauses 3-5 of subsection 1 of this section and in subsection 2 of this section the contracting authority shall communicate in writing to the European Commission, at the latter's request, through the Ministry of Finance

the names of relevant undertakings, the description of important terms and conditions and the value of the contracts to be awarded and a proof as may be deemed necessary by the European Commission that the relationship between the contracting authority and the connected undertakings complies with the requirements of this section.

(6) For the purpose of this chapter, connected undertaking means any undertaking the annual report of which is consolidated with those of the contracting authority or an undertaking over which the contracting authority may exercise, directly or indirectly, a dominant influence within the meaning of clause 10 (3) 2) or which may exercise a dominant influence over the contracting authority or which, in common with the contracting authority, is subject to the dominant influence of another undertaking.

(7) The contracting authority operating in the sectors related to water within the meaning of subsection 85 (1) is not required to apply the procedure provided for in this chapter to contracts for the purchase of water.

(8) The contracting authority operating in the sector of gas or thermal energy within the meaning of subsection 83 (1), electricity within the meaning of section 84 or exploration for, or extraction of, oil, gas, coal or other solid fuels section 88 is not required to apply the procedure provided for in this chapter to contracts for the purchase of energy or fuel necessary for the production of energy.

#### **§ 91. Procedure for establishing whether a given activity is directly open to competition**

(1) The contracting authority shall not be bound by the procedure provided for in this chapter if the activity in the sectors referred to in sections 83 to 89 performed in the place of the procurement is directly exposed to competition on markets to which access is not restricted and the European Commission has adopted a relevant decision.

(2) Whether a given activity is directly exposed to competition shall be established by the procedure provided for in Article 30 of Directive 2004/18/EC of the European Parliament and Council and in Decision 2005/15/EC (OJ L 7, 11 January, pgs 7-17) of the Commission adopted on the basis of the Directive.

**§ 92. Assessment of the procedure for implementation of utilities procurement procedures**

- (1) The contracting authorities referred to in subsection 10 (3) of this act may, at their own expense, apply an independent evaluation authority for the assessment of the compliance of the procurement procedures implemented with the provisions of this act and the European Union directives on public procurements.
- (2) The procedure for performing such assessments and the requirements for independent evaluation authorities mentioned in subsection 1 of this section shall be established by the Government of the Republic.

## Title 2

### Specifications concerning procurement procedure in awarding the public contracts

#### § 93. Procurement procedure with prior publication of the contract notice

In awarding a public contract the contracting authority may, at its own discretion, apply an open procedure, a restricted procedure or a negotiated procedure with prior publication of the contract notice (hereinafter jointly referred to as *the procurement procedure with prior publication of the contract notice*) pursuant to the procedure stipulated in this chapter.

#### § 94. Procurement procedure without publication of the contract notice

(1) The contracting authority may apply a procurement procedure without publication of the contract notice in the following cases:

- 1) when no tenders or requests to participate in the procurement procedure were submitted in a procedure with prior publication of the contract notice or if all the tenders submitted were by nature different from the technical description of the object of the public contract stipulated in the contract documents and the initial public procurement conditions have not been substantially altered;
- 2) where a public contract is awarded purely for the purpose of research, experiments, study or development, and not for the purpose of receiving profit nor of covering research and development costs, so that it would not restrict the award of the future contracts for the mentioned purposes pursuant to the *procurement procedure with prior publication of the contract notice*;
- 3) when for technical or artistic reasons, or for the reasons connected with the protection of exclusive rights, the public contract may be awarded with only one tenderer;
- 4) when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits laid down in sections 35 or 96 may not be adhered to;
- 5) the public contract will be awarded on the basis of a framework agreement, provided that the framework agreement is entered into pursuant to the procedure provided for in this act;

- 6) when the public contract is awarded with the winner or one of the winners of a design contest and the condition is laid down in the design contest notice whereas if the contract is awarded to one of the winners of the design contest, all the winners shall be invited to participate in the negotiations.

(2) In addition to the cases specified in subsection 1 of this section the contracting authority may apply a procurement procedure without publication of the contract notice in the following cases:

- 1) when the products are purchased from the same tenderer which are intended either to partially replace or supplement the products purchased previously and if a change of tenderer would entail the purchasing of products which are technically incompatible with the products currently in use or the use of which would cause disproportionate technical difficulties in operation and maintenance;
- 2) the products are purchased on a commodity market;
- 3) the products are purchased for a price which is considerably lower than the normal market price by taking advantage of especially favourable conditions which are available only for a very limited period of time;
- 4) the products are purchased under particularly advantageous terms, from a person with regard to whom liquidation proceedings have been initiated or from a trustee in bankruptcy on the basis of an agreement entered into with the obliges.

(3) In addition to the cases specified in subsection 1 of this section the contracting authority may apply a procurement procedure without publication of the contract notice to public works or public service contracts in the following cases:

- 1) the public works or services to be additionally contracted for were not included in the initial public procurement but have, due to unforeseen circumstances, become necessary, on the condition that the additional public contract is entered into with the same tenderer and due to technical or financial reasons such additional public works or services may not be separated from the initial procurement without causing disproportionate costs to the contracting authority and the additional public works or services are directly necessary for performing the public contract;



- 2) new public works or services are contracted for which repeat the public works or services contracted for on the basis of a public contract previously entered into by the same contracting parties as a result of a procedure with publication of the contract notice conducted up to three years earlier and which comply with the initial building design documentation, provided that the contract notice in the procurement procedure used to enter into the public contract previously contained notification of the possibility to enter into such public contract.

**§ 95. Differences of starting the procurement procedure and submission of public procurement report in the utilities sectors**

(1) To commence a procedure with prior publication of the contract notice, the contracting authority shall submit one of the following notices to the register:

- 1) a periodic indicative notice;
- 2) establishing of qualification system notice
- 3) a contract notice.

(2) The contracting authority may commence a procedure in the manner specified in clauses 1 and 2 of subsection 1 of this section, if the procurement procedure is organized as a restricted procedure or a negotiated procedure with prior publication of the contract notice.

(3) The contracting authority specified in subsection 3 of section 10 submits the public procurement report to the register only pursuant to the award of the public contract, including the public contract awarded on the basis of the framework agreement, the cost of which is equal to the international threshold or exceeds it.

**§ 96. Time limits of submission of tenders and requests to participate in the procurement procedure**

(1) The time limit specified in subsection 35 (2) of this section for an open procedure may be reduced to 22 days from the date on which the contract notice is sent provided that the contracting authority has submitted to the register a periodic indicative notice which was published in the register not less than 52 days and not more than one year before the date on which the contract notice was submitted to the register and which included additional

information according to subsection 97 (5) of which the contracting authority was aware of at the time of submitting the periodic indicative notice to the register.

(2) In restricted procedures and in negotiated procedures with prior publication of the contract notice the time limit for the receipt of requests to participate shall be no less than 37 days from the date on which the contract notice was published or if the tender procedure was communicated by a periodic indicative notice pursuant to the procedure provided for in subsection 97 (3) no less than 37 days from the date the proposal referred to in subsection 97 (4) was sent to candidates. In exceptional cases the time limit may be reduced to 22 days, if the application of the shorter time limit is needed due to the unforeseeable events.

(3) In restricted procedures and in negotiated procedures with prior publication of the contract notice the time limit for the receipt of tenders may be set by mutual agreement between the contracting authority and the selected candidates, provided that all candidates selected have the same time to submit their tenders. When the agreement is not found, the contracting authority shall fix a time limit for the submission of tenders which shall not be less than 24 days from the date of the invitation to tender.

(4) In case the contracting authority provides unlimited and full electronic access to contract documents starting from the publication of the contract notice or in case the procurement procedure was notified of by a periodic indicative notice or a qualification system notice by publishing a relevant document in the register and the document refers to a relevant website, the time limits for the submission of tenders may be reduced by up to 5 days provided that the time limit for the submission of tenders was not set by mutual agreement between the contracting authority and the candidates according to subsection 3 of this section.

#### **§ 97. Periodic indicative notice**

(1) The contracting authority shall submit to the register a periodic indicative notice if it requires to apply the reduced time limits for the submission of tenders provided for in subsections 96 (1) and (2) or if it requires to initiate a procurement procedure by publishing a periodic indicative notice. Only restricted procedures and in negotiated procedures with prior publication of the contract notice may be initiated by a periodic indicative notice.

(2) The contracting authority may submit to the register additional indicative notices of public contracts without adding the information included in previously published periodic indicative notices to them.

(3) If the contracting authority wishes to initiate by publishing a periodic indicative notice a procurement procedure, the periodic indicative notice should:

- 1) include a description of , services or public works that are the objects of the public contract to be awarded;
- 2) include the notice that the public contract will be awarded by a restricted procedure or a negotiated procedure with prior publication of the contract notice without the publication of a notice and invite the interested parties to submit a request to participate in the procurement procedure in the written form;
- 3) be published in the register not later than 12 months before the submission of the invitation referred to in subsection 4 of this section.

(4) When the starting of the procurement procedure has been notified of with a periodic indicative notice, the contracting authority shall send additionally the invitation to submit the request to participate in the procurement procedure to all persons having taken interest, prior to selecting these candidates, to which it submits the tender invitation.

(5) This invitation referred to in subsection 4 of this section shall include at least the following information:

- 1) nature and quantity of the object of public contract, including the possibilities concerning the award of complementary public contracts; the estimated time available for exercising these options for renewable contracts, the nature and quantity of the products to be purchased or the services or public works to be contracted for presumable in the future and, if possible, the publication dates of these contract notices;
- 2) whether it is a restricted procedure or a negotiated procedure with prior publication of the contract notice;
- 3) where appropriate, the date on which the delivery of products to be purchased or the execution of public works or services to be contracted for is to commence or terminate;

- 4) the address and closing date for the submission of requests for receipt of contract documents and the language or languages in which they should be drawn up;
- 5) the address of the contracting authority and the information necessary for obtaining the contract documents and other documents;
- 6) economic and technical requirements set for the tenderer, financial guarantees and other information;
- 7) the amount payable for the contract documents and payment procedure;
- 8) the type of public contract to be awarded;
- 9) the tender evaluation criteria and their relative share, if this information is not given in the periodic indicative notice, contract documents or in the invitation to tender.

(6) The request to participate in the procurement procedure is submitted with the documents certifying the qualification of the candidate according to the requirement in the proposal mentioned in subsection 4 of this section.

(7) The regulation of indicative notice provided for in chapter 2 of this act shall not apply to the public contracts awarded in utilities sectors.

#### **§ 98. Submission of technical specification in case of regular public contracts**

- (1) The contracting authority shall submit on request to interested persons the technical specification regularly referred to in their public contracts or the technical specifications which they intend to apply to contracts covered by periodic indicative notices within the meaning of section 97. Where the technical specifications are based on publicly available documents, the inclusion of a reference to those documents shall be sufficient.
- (2) The contracting authority may require the fee for the issue of technical specification on paper, the amount of which should not exceed the expenses of copying and delivery of the documents.

### **§ 99. Qualification of tenderers and candidates**

(1) The contracting authority establishes the criteria for the qualification of tenderers or candidates which should be objective and the content of which should be accessible to all interested persons.

(2) The contracting authority should apply bases of exclusion of the tenderers and candidates from the procurement procedure stipulated in subsection 1 of § 38 of this act as to the tenderers and candidates .

(3) Upon qualification of tenderers or candidates or in the case of restricted procedures and in negotiated procedures with publication of the contract notice the contracting authority should not:

- 1) impose additional administrative, technical or financial conditions on certain tenderers or candidates which would not be imposed on others;
- 2) require tests or evidence which would duplicate objective evidence already available.

### **§ 100. Qualification system notice**

(1) If the contracting authority requires to establish a system of qualification provided for in § 101 of this act, it shall submit the qualification system notice to the register including, inter alia, the purpose of creating the system of qualification and the conditions for joining the qualification system or references to relevant documents.

(2) If the system of qualification is valid for more than three years the contracting authority shall submit the qualification system notice to the register each year.

### **§ 101. Qualification system**

(1) The contracting authority may establish a system of qualification for qualifying the candidates pursuant to the procedure stipulated in this title.

(2) The interested person may at all times apply for its qualification and joining the qualification system.

- (3) The qualification on the basis of the qualification system may involve different stages.
- (4) The qualification system shall be operated on the basis of objective qualification criteria based on the provisions of § 99 of this act.
- (5) Where the qualification criteria referred to in subsection 4 of this section include the requirements relating to the economic and financial standing of the candidate, the latter may where necessary rely on the relevant indicators of other entity provided that the candidate is able to prove to the contracting authority in a manner acceptable to the contracting authority that this entity has necessary resources to perform public contracts and complying with the object of the contract and that these resources will be available to it throughout the period of the validity of the qualification system.
- (6) Where the qualification criteria referred to in subsection 4 of this section include requirements relating to the technical and professional ability of the candidate, the latter may in providing evidence with regard to the compliance of his technical and professional abilities with the qualification criteria where necessary rely on the relevant indicators of other entity, whatever the legal nature of the link between itself and this entity. In this case the candidate must prove to the contracting authority in a manner acceptable to the contracting authority that this entity has necessary means and measures or specialists and that these resources will be available to the candidate throughout the period of the validity of the qualification system, if needed.
- (7) The contracting authority shall keep a written record of the candidates having joined the qualification system which may be divided into categories according to the type of public contract, in case of which the qualification is carried out on the basis of the established qualification system.
- (8) At the request of the interested person, the contracting authority shall inform it about the qualification criteria referred to in subsection 4 of this section.
- (9) Where a contracting authority considers that the qualification system of certain other contracting authority meets its requirements resulting from the criteria being its basis, it shall

communicate to the interested persons having applied for the joining of the qualification system the name of such contracting authority and data on the relevant qualification system.

(10) If the contracting authority notifies of the initiation of a procurement procedure by a qualification system notice, the contracting authority shall select candidates to whom an invitation to tender will be sent from amongst the candidates joined with it and qualified according to the rules for qualification system.

(11) If the contracting authority uses the qualification system, it submits the public procurement report on each public contract awarded on the basis of the qualification system to the register according to the requirements stipulated in this act. The procurement procedure terminates on expiry of the term of qualification system.

#### **§ 102. Notification of the candidates**

(1) The contracting authority shall notify all candidates having joined the qualification system and any interested persons who have applied for joining the system of the updating of the qualification criteria.

(2) The contracting authority which has established a qualification system shall notify candidates of the decision concerning their qualification and adding with the qualification system or non-qualification within two months from the submission of the application. If the decision takes more than two months, the contracting authority shall notify the candidates of the reasons of the longer period for deciding within two months from the submission of the application and the date when their application will be accepted or refused, which may not be more than four months from the date of submission of the application.

(3) The contracting authority shall notify the candidate who has submitted the request to join the qualification system of its qualifying and joining the qualification system or the decision on non-qualification within 15 days from making the decision.

(4) The contracting authority shall notify the candidate added to the qualification system of the decision to consider its qualification ended at least 15 days ahead with the reason of termination, except in case, provided the reason of termination of qualification is the termination of the validity date of qualification system.

### **§ 103. Specifications concerning framework agreements in utilities sectors**

(1) When a framework agreement is entered into in utilities sectors the contracting authority is not required to follow the terms provided in the subsections 1,3 and 4 of § 70 of this act. In awarding the public contracts on the basis of the framework agreement the contracting authority is not obliged to follow the stipulations in subsections 2-4 of § 71.

(2) When a contracting authority enters into a framework agreement in other way than by a procurement procedure organised pursuant to the procedure provided for in this chapter, it should award the public contracts related to its activities in the sectors mentioned in § 83-89 of this act, by procurement procedure organised pursuant to the procedure stipulated in this chapter on the basis of this framework agreement.



## **Chapter 6**

# **PUBLIC PROCUREMENT OFFICE AND STATE PUBLIC PROCUREMENT REGISTER**

## **Title 1**

### **Tasks, rights and obligations of Public Procurement Office**

#### **§104. Public Procurement Office**

(1) The Office is a governmental authority in the area of government of the Ministry of Finance that:

- 1) advises the contracting authorities regarding the application of the Public Procurement Act;
- 2) exercises state supervision over carrying out public procurements and extrajudicial proceedings of misdemeanours in the extent and according to the procedure stipulated by law;
- 3) carries out international communication within its competence in the questions of public procurements;
- 4) fulfils other tasks imposed on it with this act and with the legal acts established on the basis of it.

(2) The Office evaluates the performance of the system of public procurements in the course of performing its tasks and may submit proposals for its improvement.

(3) The Office shall publish on its website up-to-date information necessary for carrying out public procurements, including the international thresholds mentioned in §15 (2) of this act within three working days from their actual publication by the European Commission.

## **Title 2**

### **State Public Procurement Register**

#### **§105. State Public Procurement Register and information entered thereto**

(1) The Register is a state database of public procurements, the responsible and authorized processor of which is the Ministry of Finance.

(2) The information included in prior information notices, periodic indicative notices, contract notices, simplified contract notices on a dynamic purchasing system, public procurement reports, qualification system notices, notices of public works concession, design contest notices and results of the design contest submitted to the register by the contracting authority and the results of the appeal procedure by the appeal committee and the mentioned documents will be published. The contracting authority shall be responsible for accuracy of information submitted to the register by it.

(3) The contracting authority may apply for the non-disclosure of such information contained in the public procurement report or results of design contest in the register, the disclosure of which will hinder the work of law enforcement authorities, is contrary to public interest or violates the business secret of undertakings or jeopardises competition between them.

(4) The information specified in subsection 2 of this section, except for the information the publishing of which would hinder the work of law enforcement authorities, is contrary to the public interest or violates the business secret of undertakings or jeopardises the competition between them.

(5) The register is established, the statutes of the register is approved, the list of information contained in the prior information notice, periodic indicative notice, contract notice, simplified contract notice of dynamic purchasing system, public procurement report, qualification system notice, public works concession notice, invitation to design contest and results of the design contest and the procedure of publishing and submitting them to the register is established by the Government of the Republic.

#### **§106. Communicating the information to the Office for Official Publications of the European Communities**

(1) The register shall forward the prior information notices, periodic indicative notices, contract notices, simplified contract notices on a dynamic purchasing system, qualification

system notices, public works concession notices and design contest notices for publication to the Office for Official Publications of the European Communities in the standard forms established with the regulation of the Commission (EC) no. 1564/2005 by the European Commission which establishes the standard forms of publication of notices related to the public procurement procedure according to the directives of the European Parliament and Council (EC) 17/2004 and (EC) 18/2004 (OJ L 257, 1 October 2005, pgs 1-126), in case the estimated value of the public procurement is equal to the international threshold or exceeds it, or in other cases if the contracting authority so requests.

(2) If the basis for submitting the report to the register by the contracting authority is the awarding of the public contract or framework agreement, the register shall draw up the public procurement report submitted to the register by the contracting authority on the basis of information, except for the public procurement report submitted on the basis of §73 (4) or §78 (4), a notice of the public contract award and shall communicate it to the Office for Official Publications of the European Communities for publication, however, in case the contract notice or prior information notice has been earlier communicated to the Office for Official Publications of the European Communities for publication in the same procurement procedure, with which the starting of procurement procedure was notified of in case the value of the awarded public contract is equal to the international threshold or exceeds it or when the contracting authority requires the forwarding of the notice of the public contract award.

(3) The register shall forward the results of the design contest submitted to the register by the contracting authority for publishing to the Office for Official Publications of the European Communities in case a notice of design contest has been earlier communicated to the Office for Official Publications of the European Communities before or in case the contracting authority requires to communicate the results of the design contest.

### **Title 3**

#### **State supervision**

##### **§107. Jurisdiction of Public Procurement Office upon performing supervision**

(1) Upon performing state supervision the Office has the right to:

- 1) control the fulfilment of the present act in an unhindered manner and without prior notification at the contracting authority. If the Office has a suspicion of a possible violation of the present act in the course of the procurement procedure in process, the Office may be present at the opening of tenders or at other proceedings of procurement procedure carried out based on the present act, also to control the proceedings and decisions already carried out by the contracting authority;
- 2) obtain information on the public procurements necessary for carrying out state supervision from the contracting authorities, also the originals or transcripts of documents concerning the public procurement;
- 3) make a decision or a precept according to the provisions of § 108 of this act, in case the contracting authority has violated the terms of the present act in the course of public procurement.

#### **§108. Decision or precept of the Public Procurement Office**

(1) The Office declares the procurement procedure of the contracting authority specified in §10 (1) 1) of this act before the public contract award invalid with its decision or makes a precept to the contracting authority specified in §10 (1) 2)-6) or (3) to declare the procurement procedure invalid, in case the contracting authority:

- 1) has not presented the evaluation criteria used in deciding on the success of the tender or their relative weight or order of importance in the contract documents and the contracting authority has opened the tenders;
- 2) has not notified of the modification of contract documents to all interested persons, tenderers or candidates, who have received the contract documents from the contracting authority;
- 3) has substantially violated the procedure of providing explanations established in § 56 of this act;
- 4) has not checked upon opening of the tenders the compliance of the submitted documents with the list required in the contract documents;
- 5) has not sent the copy of the minutes of opening the tenders to all tenderers according to provisions of subsection 3 of § 46;
- 6) has used upon the control of the compliance of tenders or evaluation of tenders as its representative or expert a person, whose relations with the tenderer may cause justified doubt regarding its objectivity;

7) has held negotiations in the course of open or restricted procedure.

(2) The Office has the right to make the decision or the precept specified in (1) of the present section in addition to the grounds established in (1), in case in the course of the procurement procedure a violation of the present act or other circumstances occur by the contracting authority that do not enable to proceed with the procurement procedure by considering all circumstances.

(3) If the contracting authority has divided the public procurement into lots within the same procurement procedure and the violation of this act by the contracting authority resulting in making the decision or precept mentioned in subsections 1 or 2 of this section by the Office, occurs as to one or some lot, the Office makes the decision or precept as to these lots as to which the violation occurs.

(4) Prior to making the decision or the precept of declaring the procurement procedure invalid, the Office shall give the contracting authority a possibility to present his objections during the term established by the Office, which may not be longer than three working days.

(5) The official of the Office with the competence of performing the state supervision may be present by the proceedings or decisions made by the contracting authority based on this act and in case the contracting authority violates the present act in carrying out the procedure or making the decision, require the correction of error or termination of the violation of law from the contracting authority on the spot.

(6) In case the procurement procedure is declared invalid or in case of making a precept all decisions and acts carried out in connection with the procurement procedure are void, notwithstanding the fact whether they were made before or after the decision on declaring the invalidity. Also, the public contract is void, which is awarded after making the decision of declaring the procurement procedure invalid or making the precept.

#### **§109. Activities of Public Procurement Office in case of violation of law**

(1) If the Office receives information about the violation of law connected with carrying out public procurements or the Office discovers a violation of law in the course of inspection of

carrying out public procurements and the collection of circumstances that became known provides grounds for a suspicion of offence and that violation of law cannot be viewed as the misdemeanour established in §111-113 of this act, the Office must notify the police authority or the prosecutor of the circumstances it is aware of.

(2) The Office has the right to make proposals to bring disciplinary action against person or persons who have violated the present act or legal acts established on the grounds of the present act.

#### **§110. Co-operation with the European Commission**

(1) If the Commission notifies the contracting authority in a written form of the obvious violation of stipulations of legal acts of the European Union regarding public procurements or the national acts applying those acts in the course of carrying out the procurement procedure, the contracting authority is obliged to forward the entire relevant information regarding the respective procurement procedure to the Office within three working days from the day of receiving the notification.

(2) The procedure of processing the information specified in subsection 1 of this section and communicating it to the European Commission shall be established by the Government of the Republic.

### **Title 4**

#### **Liability**

#### **§111. Violation of requirements of carrying out public procurement**

(1) The violation of requirements of organising public procurement which has not been mentioned in subsection 3 of this section

– shall be punished with a fine of up to 100 fine units.

(2) The violation mentioned in subsection 1 of this section, if performed by a legal person – shall be punished with a fine of 10,000 up to 20,000 kroons.

(3) The following violations of the requirements for organising the public procurement:

- 1) violations which involve the declaring of the procurement procedure invalid by the Office or by the contracting authority itself on the basis of the precept of the Office;
- 2) violation of the confidentiality requirements by the contracting authority;
- 3) violation of the requirements stipulated in this act regarding the submission of the technical specification in the contract notice, contract documents or tender invitation, qualification criteria of the tenderers or candidates or tender evaluation criteria, if the referred violation does not enable to complete the procurement procedure and award the public contract;
- 4) leaving the candidate or tenderer non-excluded from the procurement procedure, if the relevant obligation has been stipulated in this act and the contracting authority is aware of the occurrence of the basis for obligatory exclusion regarding the candidate or tenderer;
- 5) public contract award or amendment of already awarded public contract by violating the requirements stipulated in this act;
- 6) selection of the type of procurement procedure by violating the requirements stipulated in this act;
- 7) organising the procurement procedure without certain intention to award the public contract –

shall be punished with a fine of 100 up to 300 fine units.

(4) The violation mentioned in subsection 3 of this section, if performed by a legal person – shall be punished with a fine of 20,000 up to 50,000 kroons.

#### **§112. Submission of the tender without a firm intention of awarding the public contract**

(1) The submission of the tender without a firm intention of awarding the public contract – shall be punished with a fine of up to 200 fine units.

(2) The same action, in case performed by a legal person – shall be punished with a fine of up to 30,000 kroons.

### **§113. Submission of false information in the procurement procedure**

(1) The submission of false information in the procurement procedure by the tenderer or candidate – shall be punished with a fine of up to 200 fine units.

(2) The same action, if performed by a legal person – shall be punished with a fine of up to 30,000 kroons.

### **§114. Procedure**

(1) The stipulations of the Penal Code and the Code of Misdemeanour Procedure shall be applied to misdemeanours specified in §111-113 of this act.

(2) The extrajudicial body conducting proceedings of misdemeanours established in §111-113 of this act is the Office.

### **§115. Compensation of expenses to the tenderer**

The tenderer has no right to require from the contracting authority the compensation of the expenses related to the submission of the tender, including the reasonable expenses related to the preparation of the tender and the participation in the procurement procedure, design contest or granting the public works concession, except in case the tenderer proves that the contracting authority violated the stipulations regulating the carrying out of the public procurement, without which the awarding of public contract with it would have been probable.

### **§116. Compensation for the loss by the tenderer**

In case the tenderer has submitted knowingly false information or forged documents in the course of the procurement procedure or in the course of settlement of the appeal, it shall compensate the loss caused by submitting such information or documents to the contracting authority or other persons.



# APPEALS

## Title 1

### General provisions

#### §117. Appeal of contracting authority's activities

(1) The tenderer, the candidate or the person interested in participation in the procurement procedure which has the possibility to participate in this procurement procedure at the relevant moment (hereinafter the *submitter of appeal*), may appeal the activity of the contracting authority, if it finds that the violation of this act by the contracting authority violates its rights, by presenting such appeal to the appeal committee (hereinafter the *appeal committee*) located by the Public Procurement Office.

(2) The appeal may be submitted on the following documents or decisions of the contracting authority:

- 1) contract notice;
- 2) tender invitation;
- 3) concession notice;
- 4) periodic indicative notice which starts the procurement procedure;
- 5) qualification system notice which starts the procurement procedure;
- 6) invitation to design contest;
- 7) contract documents;
- 8) exclusion of the candidate or tenderer from the procurement procedure;
- 9) qualification and non-qualification of the candidate and tenderer;
- 10) declaring the tender suitable;
- 11) rejection of the tender or rejection of all tenders;
- 12) declaring the tender successful;
- 13) other decision of the contracting authority made in the course of the procurement procedure on the basis of this act which could violate the rights of the appellant.

(3) After the award of the public contract the request to compensate the loss may be submitted to the appeal committee by the candidate or tenderer with which the public contract remained unawarded due to the unlawful decision, act of the contracting authority or the document

mentioned in clauses 1-7 of subsection 2 of this section (hereinafter the *procurement source document*).

(2) The appeal committee is the extrajudicial appeal settlement body within the meaning of clause 1, subsection 2 of § 15 of the State Liability Act.

#### **§118. State fee**

(1) The state fee is paid in case of submitting the appeal and loss compensation application to the appeal committee pursuant to the procedure stipulated in the State Fees Act.

#### **§119. Appeal committee**

- (1) The appeal procedure is carried out by the members of the appeal committee.
- (2) The member of the appeal committee is independent and proceeds only from law in making its decisions and other legal acts and obligatory foreign contracts for Estonia.
- (3) The member of the appeal committee is appointed and released from office by the Government of the Republic on the proposal of the Minister of Finance. The chairman of appeal committee representing and managing the appeal committee is appointed from among the members of the appeal committee by the Government of the Republic on the proposal of the Minister of Finance.
- (4) The member of the appeal committee is appointed for five years.
- (5) The provisions stipulated in § 47 of the Courts Act are applied to the requirements set for the member of the appeal committee. The member of the appeal committee is released from office before the prescribed time in case the fact stipulated in § 47 of the Courts Act occurs which precludes the appointment of the person the member of the appeal committee according to law.
- (6) The salary of the member of the appeal committee is equal to the salary of the judges of county and administrative court. The salary of the chairman of the appeal committee is equal to the salary of the judge of circuit court.
- (7) No supervisory control is carried out over the member of appeal committee. The member of the appeal committee subordinates to the chairman of appeal committee in work arrangement and other general questions, the chairman of appeal committee subordinates to the Minister of Finance in work arrangement and other general questions. The Minister

of Finance has the right to impose disciplinary punishment. In applying the provisions of the Employees Disciplinary Punishments Act the rights of the employer belong to the Minister of Finance.

- (8) § 14–22, 29–39<sup>1</sup>, 41 and 42, 46–48, § 55<sup>1</sup>, § 59 and 60, 62–64, § 71, § 73 and 74, 77–83, clauses 3–5 of subsection 1 of § 85 and subsection 3, § 86, § 87 clause 4, § 90–106, 113<sup>1</sup>–113<sup>3</sup>, clauses 1, 2 and 7 of subsection 1 of § 117 and subsections 2, 3 and 5, § 118 and 120 of the Public Service Act are not applied to the member of the appeal committee.
- (9) The member of the appeal committee may not work elsewhere in addition to the service in the appeal committee than in studies or research.
- (10) The working conditions of the appeal committee, including the working rooms and the clerical support are guaranteed by the Office.
- (11) The administrative expenses of the appeal committee and the expenses related to the appeal procedure, including the salary of the members of the appeal committee are covered by the means allocated for that to the Office from the state budget.
- (12) The statute of the appeal committee is confirmed by the Minister of Finance.

## **§120 Removal**

- (1) The member of the appeal committee may not review the appeal and should remove itself from the review of the appeal in case of occurrence of the fact that gives reason to doubt its impartiality.
- (2) The fact mentioned in subsection 1 of this section is presumed in case the member of the appeal committee reviewing the appeal is the party to the procedure or its legal representative of:
  - 1) descendant or ascendant;
  - 2) sister, half-sister, brother, half-brother or the person who is or has been married to the party of the appeal or the sister, half-sister, brother or half-brother of its representative;
  - 3) step-parent or foster-parent, step-child or foster-child;
  - 4) adoptive parent or adopted child;
  - 5) spouse, co-habitee, also the sister of spouse or co-habitee, brother or direct blood relative including after the marriage or termination of the permanent co-habitation.
- (3) In addition to the provisions stipulated in subsections 1 and 2 of this section the member of the appeal committee should remove itself from the review of the appeal:

- 1) in the case where it is itself the party to the procedure or the person towards which the claim may be filed resulting from the procedure;
- 2) in the case it is or has been the representative of the party to the procedure or adviser or where it participated or had the right to participate as the legal representative of the party to the procedure;
- 3) in the case where it has given an opinion as an expert.
- (4) The party to the proceeding may require the removal of the member of the appeal committee reviewing the appeal in case stipulated in subsection 1 of this section.
- (5) The application for removal is reviewed by the member of the appeal committee reviewing the appeal or the panel of the appeal committee and makes the relevant decision.
- (6) Provided the application for removal is satisfied, the chairman appoints the new member of the appeal committee reviewing the appeal or the panel of the appeal committee.
- (7) Provided the replacement of the member of the panel of the appeal committee or the appointment of the new member of the appeal committee reviewing the appeal at the session is not possible, the session is postponed and the new time and place for the session is set.

## **Title 2**

### **Procedure of appeal**

#### **§121. Submission of appeal and application for compensation of loss**

- (1) The appeal shall be submitted to the appeal committee in the course of seven working days from the day when the submitter of the appeal became aware of or should have become aware of the violation of its rights or damaging of its interests, but not after the award of the public contract. The appeal regarding the procurement source document should be received three working days at the latest before the date of submission of the request to participate in the procurement procedure, tenders, designs or concession applications.

(2) The appeal must be submitted to the appeal committee in a written form and it must contain:

- 1) the name, address and other contact information of the submitter of the appeal;
- 2) the name, address and other contact information of the contracting authority;
- 3) the object of the appeal, its contradiction with the terms of this act and the reasons why the submitter of the appeal considers it to be in violation of its rights or harmful to its interests;
- 4) a clearly expressed request of the submitter of the appeal;
- 5) the list of documents annexed to the appeal.

(3) The submitter of the appeal shall add to the appeal the information at its disposal regarding the procurement procedure, in connection with which the appeal is submitted.

(4) The appeal and the documents attached to it are presented in Estonian.

(5) The application for compensation of loss may be presented to the appeal committee within one year from the award of the public contract. The application of loss compensation is reviewed by the appeal committee within reasonable time period, as to the rest the stipulations on the review of the appeal for the review of the loss compensation application are applied.

(6) The appeal committee evaluates the legality of the decision, act of the contracting authority of the procurement source document only in the course of the review of the appeal or loss compensation application.

## **§122. Starting the appeal procedure**

(1) The appeal committee shall evaluate the compliance of the appeal with the requirements stipulated in this chapter from its receipt within one working day.

(2) If the appeal committee finds that the appeal has weaknesses to be eliminated, it gives the term of two working days to the submitter of appeal for the elimination of weaknesses.

(3) The appeal committee shall not review the appeal and returns it to the submitter of the appeal with its decision, if:

- 1) the appeal is not submitted in a due course;
- 2) the submitter of appeal has not eliminated the weaknesses present in the appeal within the specified time period;

- 3) a decision has already been made in the same case in the appeal committee or the court;
  - 4) the decision or precept mentioned in subsection 1 or 2 of § 108 of this act has been made on the appealed procurement procedure or decision;
  - 5) the contracting authority has *declared* the appealed procurement procedure or decision invalid or the violation of law has been eliminated.
- (4) If the appeal submitted to the appeal committee or the documents attached to the appeal are not in Estonian, the appeal committee can consider this weakness mentioned in subsection 2 of this section and require the translation of the appeal or the documents attached to the appeal. Provided the translation of the documents attached to the appeal is not submitted by the due date, the appeal committee can disregard the documents attached to the appeal.
- (5) The appeal committee involves each person participating in the procurement procedure or interested in participation in the review of the appeal, over which rights may be decided in the course of the review of the appeal (hereinafter *the third person*). The third person should not be involved, if the appeal is submitted on the procurement source document and the appeal is not specifying the interests of which third person may be regarded.

### **§123. Suspension of procurement procedure**

- (1) In receipt of the appeal which has no bases for not reviewing stipulated in § 122 (2) of this act, the appeal committee immediately notifies the contracting authority and the third person of the submission of the appeal and forwards them the copy of appeal.
- (2) Provided the appeal committee specifies the term to the submitter of appeal for elimination of weaknesses provided in the appeal, it notifies the contracting authority of the submission of appeal and forwards it the copy of appeal submitted to the appeal committee after the elimination of weaknesses. Provided the appeal committee will not review the on the basis of clause 2, subsection 3 of § 122 of this act, the appeal committee immediately notify the contracting authority of it.
- (3) The appeal committee may make a decision on the suspension of the procurement procedure, design contest or granting the public works concession in each stage of appeal procedure on the basis of the grounded application, taking the potential consequences resulting from the suspension for all interests into account which could be damaged. The application of suspension of the procurement procedure, design contest or granting the public works concession is reviewed by the appeal committee within one working day from its

receipt. No complaint may be filed to the court on the decision of the appeal committee in settling the application of suspension of the procurement procedure, design contest or granting public works concession.

- (4) The public contract awarded pursuant to the receipt of the notice mentioned in subsection 1 or 2 of this section, but prior to the arrival of the condition mentioned in § 128 of this act is void.

#### **§124. Organization of hearing of the appeal**

- (1) The contracting authority shall submit a written answer to the appeal within two working days from the receipt of the copy of appeal from the appeal committee, adding to it all documents necessary for solving the appeal required by the appeal committee. In the written response the contracting authority may make a proposal for solving the appeal. If the third person has been involved in the review of appeal on the basis of subsection 5 of § 122 of this act, the third person also submits the written response to the appeal within two working days from the receipt of the copy of appeal from the appeal committee, by adding all documents needed for the solving of the appeal to it.

- (2) The appeal committee forwards the copy of the written answer mentioned in subsection 1 of this section within one working day to other parties of the procedure.

- (3) The appeal committee may require the written explanation on the content of the appealed procurement source document or decision prior to the review of appeal from the submitter of appeal, contracting authority and the third person. The submitter of appeal, contracting authority and the third person are obliged to submit the written explanation to the appeal committee within two working days from the receipt of such request from the appeal committee.

#### **§125. Hearing of appeals**

- (1) The appeal will be solely reviewed by the member of the appeal committee or at least the three-member panel, if the settlement of appeal collegially is important in the opinion of the chairman from the viewpoint of uniform application of law.

- (2) The appeal committee shall review the appeal whether on the basis of documents submitted in a written procedure or shall organise the review of the appeal at a public

session with the participation of the submitter of the appeal, the contracting authority and third person within seven working days from the receipt of the appeal without weaknesses to the appeal committee. The appeal committee shall organize the review of the appeal at the public session in case at least one of the parties to the appeal procedure requires it or if the appeal committee considers this necessary for the settlement of appeal.

(3) The appeal committee shall notify the contracting authority, submitter of appeal and the third person of the time and place of the session at least three working days prior to the time of session.

(4) If the contracting authority or the third person is not appearing to the session, the appeal committee reviews the appeal at the session without the participation of the contracting authority or third person. In case of non-appearance of the submitter of appeal to the session the appeal committee will not review the appeal, returns it with its decision to the submitter of appeal and immediately notifies the contracting authority of it.

(5) The appeal committee may organize the additional session, if needed, of which the contracting authority, submitter of appeal and third person are notified either at the previous session or according to the procedure stipulated in subsection 3 of this section.

(6) The management in appeal procedure and review of appeal is carried out in Estonian. The parties and the third person who do not understand Estonian, has the right to give explanations and perform at the review of the appeal through the mediation of the interpreter or the representative having the command of Estonian. The involvement of interpreter and payment of fee of interpreter is the obligation of the person requiring the interpreter.

(7) In appearing of the submitter of appeal having no command of Estonian to the session without interpreter or representative having the command of Estonian is considered the non-appearance of the submitter of appeal to the session within the meaning of subsection 4 of this section.

(8) The appeal committee may involve experts to the review of the appeal. The expert may submit its opinion in writing or at the oral session.



- (9) The basis for the fee of an expert is a triple rate of the hourly fee equal to the highest level of salary rate of the wage scale of the civil servants.
- (10) In case of occurrence of the fact during the review of the appeal which could involve the decision of declaring the procurement procedure invalid or making the precept by the Office on the basis stipulated in subsections 1 or 2 of § 108, the appeal committee immediately notifies the Office and suspends the review of appeal up to the termination of performance of supervision by the Office.

### **§126. Termination of the appeal procedure**

(1) The appeal procedure ends with:

- 1) the solving of the appeal upon an agreement;
- 2) waiving the appeal by its submitter;
- 3) acknowledging the appeal as justified by the contracting authority;
- 4) the decision of the appeal committee to leave the appeal or loss compensation application unsatisfied;
- 5) the decision of the appeal committee to satisfy the appeal partially or fully, declaring the decision that is in contradiction with this act connected with the procurement procedure made by the contracting authority void or by obligating the contracting authority to bring the procurement source document into compliance with the requirements prescribed by the legal acts;
- 6) the decision of the appeal committee to satisfy partially or fully submitter of appeal application to award against the contracting authority damages caused by its unlawful decision, act or the procurement source document;
- 7) to terminate the appeal procedure with the decision of the appeal committee pursuant to making the decision or precept mentioned in subsection 1 or 2 of §108 of this act by the Office.

(2) The termination of the procedure according to the stipulations of (1) 1), 2) or 3) of the present section shall be formalised with the decision of the appeal committee or in case the conclusion of agreement, waive of the appeal or declaring the appeal justified are carried out at a session with a written minutes, which shall be signed by the submitter of the appeal and

the contracting authority besides the appeal committee. The appeal committee is not terminating the appeal procedure on the basis of clause 1 or 3 of this section, if the interests of the third person are damaged with it.

(3) If the submitter of appeal waives the appeal before its review at the public session or making the decision in written procedure, the appeal committee terminates the procedure with its decision and notifies at once the contracting authority of it.

(4) The termination of the appeal procedure according to the stipulations of (1) 4), 5) or 6) of the present section shall be formalised with a motivated decision of the appeal committee.

(5) In termination of the appeal procedure based on the (1) 1), 2), 3) or 7) of this section the appeal committee does not evaluate legality of the procurement source document, decision of the contracting authority or procedure.

(6) In termination of the appeal procedure in case of the full satisfaction of the appeal specified in (1) 3), 5) or 7) of the present section or the full satisfaction of the loss compensation application mentioned in clause 6 the appeal committee shall order with its decision payment from the contracting authority for the benefit of the submitter of the appeal the state fee paid by it in full in the appeal procedure and the expert's fee paid or subject to payment within the necessary and grounded scope. In case of partial satisfaction of the loss compensation application or appeal, the appeal committee makes a decision for payment of state fee and expert's fee from the contracting authority proportionally with the satisfaction of the appeal or loss compensation application. In termination of the appeal procedure on the basis of clauses 2 or 4 of subsection 1 of this section the appeal committee makes a decision on claiming the expert's fee within necessary and grounded scope paid or subject to payment from the submitter of appeal for the benefit of the contracting authority or third person.

#### **§127. Notification and effect of the decision**

(1) The decision of the appeal committee with which the appeal substantively is settled, will be publicly disclosed in the office of the appeal committee within ten working days from the termination of the review of appeal at the session. In termination of the session the appeal committee notifies of the date of announcing its decision.

- (2) If the appeal committee reviews the appeal in written procedure, the decision is made with which the appeal is substantively settled, is publicly disclosed within ten working days from the receipt of the appeal without weaknesses to the appeal committee.
- (3) Provided the appeal committee has involved an expert in the review of appeal on the basis of subsection 8 of § 125 of this section or turned to the European Court of Justice for obtaining the preliminary conclusion in the case and thus the decision may not be made within the term mentioned in subsections 1 and 2 of this section, the decision of the appeal committee, with which the appeal is substantively settled, will be disclosed within ten working days from the receipt of the expert opinion or preliminary conclusion.
- (4) In the cases mentioned in subsections 2 and 3 of this section the appeal committee notifies the time of disclosing the decision to the parties of the procedure at least three working days before disclosing the decision.
- (5) In satisfying the appeal the decision of the appeal committee is obligatory for the contracting authority to fulfil. The contracting authority is obliged to harmonise all decisions made during its procurement procedure with the decision of the appeal committee entered into force. The public contract awarded by the contracting authority which contradicts the decision of the appeal committee is void.

#### **§128. Continuing the procurement procedure**

(1) The contracting authority may not continue the suspended procurement procedure or give consent for the award of the public contract prior to the passing of 14 days from the disclosure of the decision of the appeal committee mentioned in clauses 4 or 5 of subsection 1 of §126 of this act.

(2) In termination of the appeal procedure on the basis not mentioned in subsection 1 of this section or in not reviewing the appeal and returning it on the basis of subsection 4 of §125 or subsection 3 of §122 of this act the contracting authority may agree to award the public contract pursuant to the disclosure of the decision of the termination of appeal procedure or not reviewing returning of appeal.

#### **§129. Specifications of administrative court procedure**

(1) The complaint on the decision of appeal committee is filed to the circuit court of the location of the contracting authority and the specifications stipulated in this chapter on the appeal as provided in the code of administrative court procedure are applied to its procedure. The administrative court is not competent in the first stage to review the complaints in the cases mentioned in subsections 2 and 3 of §117 of this act.

(2) The complaint may be filed on the decision of the appeal committee after the termination of the appeal procedure by:

1) the submitter of appeal, if the appeal committee has made the decision mentioned in clause 4 of subsection 1 of §126 or the decision on the partial satisfaction of the appeal mentioned in clause 5, subsection 1 of §126 or on partial satisfaction of the application mentioned in clause 6 of subsection 1 of §126;

2) the third person, if the appeal committee has made the decision mentioned in clause 5 of subsection 1 of §126 of this act;

3) the contracting authority, if the appeal committee has made the decision mentioned in clauses 5 and 6 of subsection 1 of § 126 of this act;

(3) The date of filing of a complaint mentioned in subsection 2 of this section is 7 days from the public disclosure of the decision of the appeal committee.

(4) If the contracting authority has awarded the valid public contract, the court is not cancelling the decisions mentioned in subsection 2 of § 117 of this act. After the award of the valid public contract the submitter of appeal may apply for the establishment of unlawfulness of the appealed decision of the contracting authority in the same case, if it has a grounded interest for that purpose.

## **Chapter 8**

### **IMPLEMENTING PROVISIONS**

#### **§ 130. Specification of the contracting authorities**

The persons established and operating by the moment of enforcement of this act and complaint with the features stipulated in subsection 2 of § 10 of this act specify their status as to the features stipulated in subsection 2 within one month from the enforcement of this act and notify immediately the Office of it.

### **§ 131. Termination of the started tendering procedures, settlement of submitted appeals and the validity of the legal acts established on the basis of law**

(1) The public procurement procedures started before the enforcement of this act are completed proceeding from the requirements stipulated in the Public Procurement Act (RT I 2000, 84, 534; 2005, 18, 105), except the obligation to submit the public procurement declaration stipulated in § 20 of the Public Procurement Act. In termination of the tendering procedure of the mentioned public procurement the contracting authority has the obligation to submit the public procurement report to the register pursuant to the procedure stipulated in § 37 of this act.

(2) The design contests started before the enforcement of this act are completed proceeding from the requirements stipulated in the Public Procurement Act (RT I 2000, 84, 534; 2005, 18, 105), except the obligation to submit the design contest declaration stipulated in § 20 of the Public Procurement Act. In termination of the mentioned design contest the contracting authority has the obligation to submit the results of the design contest to the register pursuant to the procedure stipulated in subsection 7 of § 80 of this act.

(3) The appeals are submitted in the public procurement procedures mentioned in subsection 1 of this section and the appeal committee reviews these proceeding from the requirements stipulated in the Public Procurement Act (RT I 2000, 84, 534; 2005, 18, 105).

(4) The legal act established on the basis of subsection 1 of § 36<sup>1</sup> of the Public Procurement Act (RT I 2000, 84, 534; 2005, 18, 105) is valid up to the declaring it invalid or up to the establishment of the legal act on the basis of subsection 5 of § 42 of this act by the Government of the Republic.

### **§ 132. Specifications in case of public procurements carried out by Eesti Pank**

In case of public procurements carried out by Eesti Pank no provisions stipulated in clause 3 of § 107, § 108 and § 117-129 of this act are applied.

### **§ 133. Threshold of the public procurement**

In comparing the estimated value of the public procurement with the threshold mentioned in subsection 1 of § 5, subsections 6 and 7 of § 16 and subsection 2 of § 37 the official exchange rate of Eesti Pank is taken into account.

#### **§ 134. Amendment of the Databases Act**

The clause 2 of subsection 1 of § 28 of the Databases Act (RT I 1997, 28, 423; 2004, 30, 204) is amended and worded as follows:

“2) the person having submitted the successful tender of public procurement organised by open procedure.”

#### **§ 135 Amendment of the Electronic Communications Act**

The following changes will be made in the Electronic Communications Act (RT I 2004, 87, 593, 2005, 71, 545):

- 1) the second sentence of subsection 1 of section 73 is amended and worded as follows:

“If the fee presumably paid for the provision of the universal service on the basis of the contract for provision of universal service exceeds the rate mentioned in subsection 1 of § 15 of the Public Procurement Act, the public procurement will be organized pursuant to the procedure stipulated in the Public Procurement Act.”;

- 2) the words “in tender invitation documents” are replaced with the words “in contract documents” in the subsection 1 of section 74;
- 3) the words “in tender invitation documents” are replaced with the words “in contract documents” in the subsection 1 of section 76;

#### **§ 136. Amendment of the Administrative Cooperation Act**

The following changes will be made in the Administrative Cooperation Act (RT I 2003, 20, 117, 2005, 70, 540):

1) the subsection 1 of section 13 is amended and worded as follows:

“(1) In case of award of contract under public law for authorizing for the fulfilment of the administrative task with the person, the procedure of the carrying out of the procurement procedure and the terms for the award of the service contract is proceeded from in the Public Procurement Act, by considering the specifications stipulated in this section.”;

2) the words “considering the subsection 3 of § 4 of the Public Procurement Act” are deleted from clause 4 of subsection 1<sup>1</sup> of section 13”;

3) the word “tendering procedure” is replaced with the word “procurement procedure” in subsections 2 and 3 of section 13;

4) the words “§ 61-71<sup>1</sup> and 73<sup>1</sup>-73<sup>4</sup>” are replaced with the words “§ 107-114 and 117-129” in subsection 4 of section 13;

5) section 13 is completed with the subsection 5 in the following wording:

“(5) In organizing the public procurement procedure on the basis of subsection 1 of this section for the award of the contract under public law to be concluded no procedure of submission of the contract notice, prior information notice and public procurement report to the national public procurement register of the Public Procurement Act is applied. The contract notice for the award of the contract under public law and the relevant report and, if needed, the appendix of the report will be published in the Ametlikud Teadaanded, considering the terms stipulated in the Public Procurement Act.”;

6) the second sentence of subsection 3 of section 14 is amended and worded as follows:

“In awarding the contract under public law the negotiated procedure without publication of a contract notice stipulated in the Public Procurement Act is applied.”

## **§ 137. Amendment of the Administrative Procedure Act**

The words “tendering procedure of the public procurements and the settlement of appeals made in the course of it” are replaced with the words “implementation of public procurements and settlement of appeals for the purpose of the Public Procurement Act”.

#### **§ 138. Amendment of the Cultural Endowment Act**

The publication citations are omitted from the subsection 1 of § 6<sup>1</sup> of the Cultural Endowment Act (RT I 1994, 46, 772, 2003, 21, 123).

#### **§ 139. Completion of the Punishment Register Act**

The subsection 1 of § 17 of the Punishment Register Act (RT I 1998, 111, 1830, 2004, 18, 131) is completed with clause 15 in the following wording:

“15) for the control of the compliance of the tenderer, candidate or subcontractor appointed by the tenderer with the requirements stipulated in law by the contracting authority organizing the public procurement.”

#### **§ 140. Amendment of the Taxation Act**

The publication citations are omitted from clause 10 of § 29 of the Taxation Act (RT I 2002, 26, 150; 2005, 68, 528).

#### **§ 141. Declaring of the Public Procurement Act invalid**

The Public Procurement Act (RT I 2000, 84, 534, 2005, 18, 105) is declared invalid.

#### **§ 142. Amendment of the State Fees Act**

The following changes are made in the State Fees Act (2006, 58, 439):

- 1) the subsection 16 of section 56 is amended and worded as follows:

“(16) in filing the complaint on the decision of the appeal committee to the circuit court the state fee is paid in the rate stipulated in § 222 of this act .”;



2) the section 222 is amended and worded as follows:

### **§ 222. Review of appeals**

(1) In filing the appeal of public procurement the state fee is paid as follows:

- 1) 10,000 kroons, if the estimated value of the public procurement is lower of the international threshold;
  - 2) 20,000 kroons, if the estimated value of the public procurement is equal to the international threshold or exceeds it.
- (2) The state fee is paid in the rate stipulated in subsection 11 of § 56 of this act in filing the loss compensation application.”

### **§ 143. Amendment of the Structural Aid Act**

The publication citations of the Public Procurement Act are omitted from clause 9 of subsection 3 of § 41 of the Structural Aid Act (RT I 2003, 82, 552; 2005, 37, 279; 39, 308) and the word “purchaser” is replaced with the word “contracting authority”.

### **§ 144. Amendment of the Guarantee Fund Act**

The publication citations of the Public Procurement Act are deleted from the third sentence of subsection 1 of § 82 of the Guarantee Fund Act (RT I 2002, 23, 131, 2005, 59, 464).

### **§ 145. Amendment of the Roads Act**

The publication citations of the Public Procurement Act are deleted from the subsection 1 of § 25 of the Roads Act (RT I 1999, 26, 377; 2005, 61, 479).

### **§ 146. Amendment of the Code of Enforcement Procedure**

The subsection 1 of § 2 of the Code of Enforcement Procedure (RT I 2005, 27, 198; 2006, 7 42) is completed with clause 7<sup>1</sup> in the following wording:

“7<sup>1</sup>) the decision on the financial claims of the appeal committee of the public procurements entered into force.”

### **§ 147. Amendment of the Liquid Fuel Stocks Act**

The subsection 1 of § 16 of the Liquid Fuel Stock Act (RT I 2005, 13, 66; 68, 531) is amended and worded as follows:

“(1) The procurements organized for the award of the contracts related to the establishing and keeping of stocks are considered the public procurements related to the protection of essential state interest for the purpose of clause 2 of subsection 1 of § 14 of the Public Procurement Act.”

### **§ 148. Amendment of the Public Transport Act**

The following changes are made in the Public Transport Act (RT I 2000, 10, 58; 2003, 88, 589):

- 1) the third sentence of subsection 1 of section 10 is amended and worded as follows:

“If the fee presumable paid to the carrier on the basis of the public service contract exceeds the threshold mentioned in subsection 1 of § 15 of the Public Procurement Act, the contractor for the transport organizes the public procurement pursuant to the procedure stipulated in the Public Procurement Act.”;

- 2) the first and second sentence of subsection 2<sup>1</sup> of section 10 is amended and worded as follows:

“(2<sup>1</sup>) If the appeal is submitted to the appeal committee related to the organization of public competition or public procurement or the complaint is filed to the administrative court related to the imposing of the public service obligation on the carrier with the special or sole right and if the public service contract terminates before the settlement of appeal, the contractor of the transport has the right to award the new public service contract with the former carrier having serviced the line up to the relevant decision of the appeal committee or enforcement of the court judgment up to the end of the year or up to the finding of the new carrier on the basis of the provisions stipulated in subsections 1 and 2 of this section, but not longer than for two years from the entry into force of the relevant decision of the appeal committee or court judgment.”;

3) the subsection 2<sup>2</sup> of section 10 is amended and worded as follows:

“(2<sup>2</sup>) If the carrier terminates the fulfilment of the public service obligation before the prescribed time, the contractor of the transport has the right to find a new carrier by negotiated procedure without publication of a contract notice. In this case the contractor of the transport has the obligation to award the contract with the new carrier pursuant to the procedure stipulated in the Public Procurement Act within two years from the entry into force of the public service contract awarded as a result of the negotiated procedure without publication of a contract notice.”;

4) The section 21 is amended and worded as follows:

**“§ 21. Procurement procedure organized for the implementation of the public transport project supported from the state investment**

The procurement procedure is organized for the implementation of the public transport project mentioned in §17-19 of this act pursuant to the procedure stipulated in the Public Procurement Act.”

**§ 134. Entry into force of act**

(1) This act enters into force on 1 May 2007.

(2) § 8, subsection 8 of § 31, § 51 and subsections 5 and 6 of § 55 enter into force on 1 January 2008.

Toomas Varek

President of the Riigikogu

Tallinn, 2006

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<sup>1</sup> The directive 2004/17/EC of the European Parliament and Council, 31 March 2004, which coordinates the procurement procedures of contracting authorities operating in the sectors of water, energy, transport and postal services (OJ L 134, 30 April 2004, pgs 1-113), last changed with the regulation of the commission (EC) no. 2083/2005 (OJ L 333, 20 December 2005, pgs 28-29);

The directive 2004/18/EC of the European Parliament and Council, 31 March 2004, which coordinates the procedure for the award of public works contracts, public supply contracts and public service contracts (OJ L 320, 30 April 2004, pgs 114-240), last changed with the regulation of the commission (EC) no. 2083/2005 (OJ L 333, 20 December 2005, pgs 28-29);

The directive 89/665/EC of the European Parliament and Council, 31 March 2004, which coordinates the legal and administrative norms related to the application of the procedure of review of award of state supply and works contracts (OJ L 395, 30 December 1989, pgs 33-35), last changed with the directive 92/50/EC (OJ L 209, 24 July 1992, pgs 1-24);

The directive 92/13/EC of the European Parliament and Council, 31 March 2004, which coordinates the legal and administrative norms related to the application of the regulations of the community handling the procurement procedures of the units operating in the water supply, energy, transport and telecommunication sectors (OJ L 76, 23 March 1992, pgs 14-20);

The directive of the commission 2005/51/EC, with which the XX appendix of the directive 2004/17/EC of the European Parliament and Council and the VIII appendix of the directive 2004/18/EC on the public procurements (OJ L 257, 1 October 2005, pgs 127-128).