

NB: Unofficial translation

Act
on Public Contracts

(348/2007)

PART I GENERAL PROVISIONS ON THE PRINCIPLES AND SCOPE OF APPLICATION

Chapter 1 Scope of application and principles

Section 1 — Purpose of the Act

- (1) State and municipal authorities and other contracting authorities shall put their contracts out to tender as provided in this Act.
- (2) The purpose of this Act is to increase the efficiency of the use of public funds, promote high-quality procurement and safeguard equal opportunities for companies and other communities in offering supply, service and public works contracts under competitive bidding for public procurement.
- (3) This Act governs the entry into force of Directive 2004/18/EC of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, hereinafter referred to as the "Directive on public contracts", and Council Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, hereinafter referred to as the "Directive on the review procedures".

Section 2 — Principles of public contracts

- (1) Contracting authorities shall make use of the existing competitive conditions, ensure equality and non-discriminatory treatment among all participants in the procurement procedure and act in a transparent way while meeting the requirements of proportionality.
- (2) Contracting authorities shall endeavour to organise their procurement procedures as economically and systematically as possible, in as appropriate combinations as possible, taking environmental considerations into account. In order to reduce administrative work involved in procurement, contracting authorities may employ framework agreements and joint procurement or make use of other partnership opportunities available in awarding public contracts. If the candidate or tenderer is another contracting authority or a community or institution which is owned by the contracting authority, it shall be treated equally alongside other candidates or tenderers.

Section 3 — Requirement for non-discrimination in service activities based on special or exclusive rights

Where a contracting authority grants special or exclusive rights to carry out a public service activity to an entity other than such a contracting authority, the act by which that right is granted shall provide that, in respect of the contracts which it awards as part of said activities, the entity must comply with the principle of non-discrimination on the basis of nationality.

Section 4 — Provisions in accordance with the WTO Agreement on Government Procurement

In public contracts falling within the scope of the World Trade Organisation (WTO) Agreement on Government Procurement (Treaty Series of the Statute Book of Finland 5/1995) the same conditions shall apply to the tenderers and bids from other contracting states as apply to those from Finland and other European Union member states.

Section 5 — Definitions

For the purposes of this Act and the regulations based thereon, the following phrases shall have the following meanings:

- (1) *Public contracts* are contracts of financial interest concluded in writing between one or more contracting authorities and one or more suppliers and having as their object the execution of works, the supply of products or the provision of services;
- (2) *Public works contracts* are public contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex C or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority; a public works contract may be an economic or technical entity formed by building, civil or hydraulic engineering works;
- (3) *Public supply contracts* are public contracts other than the public works contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products; a public contract having as its object the supply of products and which also covers assembly and installation operations shall also be considered to be a public supply contract;
- (4) *Public service contracts* are public contracts other than public works or supply contracts having as their object the provision of services; a public contract having as its object both products and services shall be considered to be a public service contract if the value of the services in question exceeds that of the products covered by the contract; a public contract having as its object services and including works activities within the meaning of Annex C shall also be considered to be a public service contract;
- (5) *Public works concession* is a contract of the same type as a public works contract except for the fact that the consideration for the works to be carried out consists either solely of the right to exploit the work or of this right together with payment;
- (6) *Service concession* is a contract of the same type as a public service contract except for the fact that the consideration for the provision of services consists either solely of the right to exploit the service or of this right together with payment;
- (7) *Supplier* means any natural or legal person or public entity or group of such persons or bodies which offers on the market products or services or the execution of a work or works;
- (8) "Candidate" is one which has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue;
- (9) *Tenderer* is a supplier who has submitted a tender;
- (10) "Open procedure" means a procurement procedure, in which the contracting authority publishes a contract notice and all interested suppliers may submit a tender; in addition to the contract notice, the contracting authority may send invitations to tender to suppliers which it deems appropriate;
- (11) *Restricted procedure* means a procurement procedure in which the contracting authority publishes a contract notice and any supplier may request to participate; only those suppliers invited by the contracting authority may submit a tender;
- (12) *Negotiated procedure* means a procurement procedure in which the contracting authority publishes a contract notice and any supplier may request to participate; the contracting authority negotiates the terms of the contract with selected suppliers;
- (13) *Direct award* is a procurement procedure in which the contracting authority admits to the procedure one or more suppliers without publication of a contract notice and negotiates the terms of contract with these;
- (14) *Competitive dialogue* is a procurement procedure in which the contracting authority publishes a contract notice and any supplier may request to participate; the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the selected candidates are invited to tender;
- (15) *Framework agreement* is an agreement between one or more contracting authorities and one or more suppliers, the purpose of which is to establish the terms, such as with regard to price and the quantity envisaged, of contracts to be awarded during a given period;
- (16) *Design contest* means a procurement procedure which enable the contracting authority to acquire, for example in the fields of town and country planning, architecture and engineering or data processing, a plan selected by a jury with or without the award of prizes;
- (17) *Dynamic purchasing system* is a completely electronic process for making commonly used purchases generally available on the market; the procedure is limited in duration and

open throughout its validity to any tenderers which satisfy the selection criteria and which have submitted an indicative tender that complies with the specification;

(18) *Electronic auction* is a repetitive procedure involving an electronic device for the presentation of new prices, revised downwards, or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using an automatic evaluation method; public works contracts and service contracts having as their subject-matter intellectual performances may not be the object of electronic auctions;

(19) *Technical specification* means the definition of the characteristics required of a product, service or materials subject to tender; these characteristics shall, among others, include levels of quality or environmental performance, design, conformity and applicability, assessment of the use of the product, product safety and measurements, the name under which the product is sold, terminology, symbols, testing and test methods, including requirements relevant to the product as regards the package markings, labelling, user instructions, production processes and methods and conformity assessment procedures; in the case of public works contracts, the technical specifications also include rules relating to design, costing, testing and inspection, acceptance conditions, methods and techniques of construction and other technical conditions in relation to finished works and the materials or parts which they involve;

(20) *Technical definition* means a European standard, European technical approval, official technical specification, international standard, technical reference, national standard, national technical approval or other national document relating to the design, calculation, execution of the works or use of the products.

(21) *Standard* means a technical specification which has been published as a standard, approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

(a) *international* is a standard adopted by an international standards organisation and made available to the general public;

(b) *European* is a standard adopted by an European standards organisation and made available to the general public; or

(c) *national* is a standard adopted by a national standards organisation and made available to the general public;

(22) *European technical approval* means a favourable technical assessment of the fitness for use of a building works product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application of use. European technical approvals are issued by an approval body designated for this purpose by the member state.

(23) *Common technical specification* means a technical specification laid down in accordance with a procedure recognised by the member states which has been published in the *Official Journal of the European Union*;

(24) *Technical reference* means any product produced by European standardisation bodies, other than official standards, according to procedures adopted for the development of market needs;

(25) *Recognised body* means test and calibration laboratories and certification and inspection bodies which comply with applicable European standards; the contracting authority shall accept certificates from recognised bodies established in other member states.

(26) The *Common Procurement Vocabulary (CPV)* shall designate the reference nomenclature as adopted by Regulation of the European Parliament and of the Council (EC) No 2195/2002;

(27) *Written or in writing* means any expression consisting of words or figures which can be read, reproduced and subsequently communicated; it may include information which is transmitted and stored by electronic means;

(28) *Electronic means* means using electronic equipment for the processing and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

Chapter 2 — Scope of application

Section 6 — Contracting authorities

- (1) For the purposes of this Act, contracting authorities shall mean:
- (1) State and municipal authorities and joint municipal authorities;
 - (2) The Evangelic Lutheran Church and the Orthodox Church and parishes and other authorities thereof;

- (3) State enterprises in accordance with the State Enterprise Act (1185/2002);
 - (4) Bodies governed by public law, meaning legal persons established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and:
 - (a) financed, for the most part, by the contracting authority referred to in paragraphs 1—4;
 - (b) subject to management supervision by the contracting authority referred to in paragraphs 1—4; or
 - (c) having an administrative, managerial or supervisory board, more than half of whose members are appointed by the contracting authority referred to in paragraphs 1—4; and
 - (5) any purchaser if it has received more than half of the value of the contract in aid for the award of the contract from the contracting authority referred to in paragraphs 1—4.
- (2) The application of this Act on the activities of the Evangelic Lutheran Church shall fall within the scope of the Church Act (1054/1993).

Section 7 — General exclusions from the scope of public contracts

- (1) This Act shall not apply to public contracts:
 - (1) when they are declared to be secret, when their performance must be accompanied by special security measures in accordance with the laws, or when the protection of the basic security interests of the state so requires;
 - (2) when their objective is mainly applicable to military use; or
 - (3) which are governed by different procedural rules and awarded:
 - (a) pursuant to an international agreement between Finland and one or more third countries and covering supplies or works intended for the joint implementation or exploitation of a work by the signatory states or services intended for the joint implementation or exploitation of a project by the signatory states;
 - (b) pursuant to the particular procedure of an international organisation; or
 - (c) pursuant to a concluded international agreement relating to the stationing of troops and concerning the undertakings of a European Union member state or a third country.
- (2) Contrary to what is stated in subsection 1, paragraph 3, subparagraph a, the Act is applied to public contracts of the foreign affairs administration relating to development cooperation contracts.

Section 8 — Exclusions from the scope of public service contracts

- (1) This Act shall not apply to public service contracts for:
 - (1) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;
 - (2) the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters, and broadcasting time;
 - (3) arbitration and conciliation services;
 - (4) central bank services and financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments, such as transactions by the contracting authority to raise money or capital;
 - (5) employment contracts;
 - (6) research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;
 - (7) acquisition of emission units falling within the scope of legislation (Treaty Series of the Statute Book of Finland 12/2005 and 13/2005) governing the entry into force of regulations under the Kyoto Protocol to the UN Framework Convention on Climate Change; and

- (8) acquisition of air traffic services falling within the scope of Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes.
- (2) Contrary to what is stated in subsection 1, paragraph 1, the financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Act.

Section 9 — Public contracts in the water, energy, transport and postal services sectors

- (1) This Act shall not apply to public contracts relating to activities that fall within the scope of the Act on public contracts by contracting authorities in the water, energy, transport and postal services sectors, hereinafter referred to as the "Act on public contracts in special sectors" (Finnish Statute Series No 349/2007), with the exception of public contracts in the postal services sector pursuant to Section 9 of the Act until the end of the transitional period within the meaning of Section 87 of this Act. This Act shall not apply to public contracts relating to activities provided for by the Act on public contracts in special sectors and having been excluded from the scope of that Act. The judicial remedies available under this Act shall be applied to contracts falling within the scope of the Act on public contracts in special sectors.
- (2) This Act shall not apply to public contracts relating to activities mentioned in the Act on public contracts in special sectors, where the value of said contracts does not exceed the European Union threshold amounts established in Section 12 of the Act on public contracts in special sectors.

Section — 10 Public contracts awarded in-house

This Act shall not apply to public contracts which contracting authorities award to entities which are formally independent of the contracting authority with autonomous decision-making powers, insofar as the contracting authority independently or in cooperation with other contracting authorities exercises over the entity concerned a control that is similar to that which it exercises over its own departments and the entity carries out the essential part of its activities with those controlling authorities.

Section 11 — Public contracts awarded by central purchasing bodies

- (1) Contracting authorities which purchase supplies, services or works from or through a central purchasing body shall be deemed to have complied with this Act insofar as the central purchasing body has complied with it.
- (2) A "central purchasing body" is a contracting authority which acquires supplies or services intended for the contracting authorities owning it either directly or indirectly, or awards public contracts or concludes framework agreements for supplies, services or works intended for the contracting authorities. The central purchasing body shall operate in order to perform the aforementioned activities, having been established expressly to perform these activities or been prescribed the performance of these activities as part of its remit.
- (3) The activities of the central purchasing body may also be directed at an European Union agency operating in Finland.

Section 12 — Service contracts awarded on the basis of an exclusive right

This Act shall not apply to public service contracts awarded by a contracting authority to another contracting authority on the basis of an exclusive right to provide services which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty establishing the European Community.

Section 13 — Opening up to competition of works contracts receiving state aid

Where a decision on awarding state aid is made, it may be required that the contracting authority may not perform the public works contract in receipt of state aid independently without competitive tendering.

Section 14 — Reserving public contracts for sheltered workshops

Contracting authorities may reserve the right to participate in public contract award procedures in favour of sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are people with disabilities who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions. The public contract notice must indicate that the contract is reserved for sheltered workshops or programmes.

Chapter 3 — Thresholds and calculating the estimated value of public contracts

Section 15 — National thresholds

This Act shall not apply:

- (1) to public supply and service contracts, design contests or service concessions the estimated value of which, net of VAT, is less than EUR 15,000;
- (2) contrary to what is stated in paragraph 1 on public service contracts, health care and social services contracts within the meaning of Annex B (Group 25) and the services mentioned in Annex B and purchased pursuant to Section 3 of Chapter 6 of the Act on the public employment service (1295/2002) in a joint purchasing agreement with the employer, provided that the estimated value of the contract, net of VAT, is less than EUR 50,000; and
- (3) to public works and public works concessions contracts the estimated value of which, net of VAT, is less than EUR 100,000.

Section 16 — EU thresholds

- (1) The EU thresholds, based on the Commission Regulation (EC) No 2083/2005 amending Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts, shall be:
 - (1) EUR 137,000 for public supply and service contracts awarded by central government authorities;
 - (2) EUR 211,000 for supply and service contracts awarded by contracting authorities others than those covered by paragraph 1.
 - (3) EUR 5,278,000 for public works and public works concession contracts.
- (2) The European Commission shall revise the thresholds every two years in accordance with the procedure laid down in Article 78 of the Directive on public contracts and publish the revised thresholds in the *Official Journal of the European Union*; following the publication, the thresholds laid down in subsection 1 shall be replaced by the new thresholds revised by the Commission. The Ministry of Trade and Industry must communicate any changes to the EU thresholds without delay in the *Official Journal* in accordance with the revisions by the Commission.
- (2) The bodies understood as central government authorities in Finland, as covered by subsection 1, paragraph 1 and included in Annex IV of the Directive on public contracts, shall be laid down by a Government decree.

Section 17 — Calculation of the estimated value of a contract

- (1) The criterion for the calculation of the estimated value of a contract shall be the maximum total compensation, net of VAT. Calculation of the estimated value shall take account of any alternative methods of execution of the contract, option or extension clauses included in the contract and fees or payments

- payable to the candidates or tenderers. Calculation of the estimated value of joint contract agreements within the meaning of Section 15, subsection 2 shall take account of the share financed by employment authorities.
- (2) With regard to public works contracts, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies necessary for executing the works and placed at the contractor's disposal by the contracting authority.
 - (3) Where the contract is being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots when calculating the estimated value of the contract. Where the aggregate value of the lots exceeds the national threshold laid down in Section 15 or the EU threshold laid down in Section 16, the regulations covering the contracts exceeding the thresholds pursuant to Chapter 4 shall apply to the awarding of each lot respectively.
 - (4) The contracting authorities shall not apply this Act pursuant to Section 21, subsection 1 in respect of lots the estimated value of which is less than EUR 80,000 for services and supplies or EUR 1 million for works, provided that the aggregate value of those lots does not exceed 20 % of the aggregate value of the lots as a whole. However, where the estimated value of the lot exceeds the national threshold laid down in Section 15, the contracting authority must comply with the regulations of this Act pursuant to Section 21, subsection 2.
 - (5) The estimated value shall be valid at the time of publication of the contract notice by the contracting authority or at the moment at which the contracting authority commences the contract awarding procedure.

Section 18 — Calculation of estimated value of certain public service contracts

The value to be taken as a basis for calculating the estimated contract value shall be as follows:

- (1) for insurance services: the premium payable and other forms of remuneration;
- (2) for banking and other financial services: the fees, commissions, interest and other forms of remuneration;
- (3) for design contracts: fees, commission payable and other forms of remuneration;
- (4) for design contests organised as part of a procedure leading to the award of a public service contract: the estimated value of the public services contract, including any possible prizes and payments to participants; and
- (5) the prizes and payments payable to participants in other design contests, including the estimated value of the public services contract which might be subsequently concluded under paragraph 7 of Section 27, if the contracting authority does not exclude such an award in the contest notice.

Section 19 — Calculation of estimated value for the contract period

- (1) With regard to public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:
 - (1) in the case of fixed-term public contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, if the term of the contract is greater than 12 months, the total value including the estimated residual value; or
 - (2) in the case of public contracts without a fixed term or the term of which cannot be defined, the estimated monthly value multiplied by 48.
- (2) In the case of public supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:
 - (1) either the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract; or

- (2) the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if that is longer than 12 months.
- (3) For service contracts which do not indicate a total price, the value to be taken as a basis for calculating the estimated contract value shall be as follows
 - (1) in the case of fixed-term public contracts, if that term is less than or equal to 48 months, the total estimated value for the term of the contract; or
 - (2) in the case of public contracts without a fixed term or if the term of the contract is greater than 48 months, the estimated monthly value multiplied by 48.
- (4) With regard to framework agreements, the value to be taken into consideration shall be the total estimated value of all the contracts envisaged for the term of the framework agreement.

Section 20 — Prohibition to artificially subdivide or combine contracts

No public contract may be divided into lots, severed or calculated using artificial methods with the intention of excluding it from the scope of this Act. A public supply or service contract may not be combined with a works contract, neither may contracts be otherwise artificially combined to prevent them coming within the scope of this Act.

Chapter 4 — Application rules for various contract types

Section 21 — Application rules for public supply and service contracts, service concessions and public works contracts

- (1) The provisions laid out in this Act shall be applied to public supply contracts, public service contracts referred to in Annex A and to works contracts above the EU threshold, as referred to in Section 16, subsection 1, paragraphs 1 or 2, with the exception of the provisions laid down in Chapter 9. The provisions of this Act shall be applied to the cases in which services referred to in Annex A are purchased together with services referred to in Annex B, insofar as the value of the services referred to in Annex A is greater than the value of the services referred to in Annex B and the total value of such a service contract exceeds the value of the EU threshold.
- (2) The provisions laid down in Titles I, III and IV shall apply to public service contracts as defined in Annex B, service concessions and public contracts concluded by the foreign affairs administration relating to development cooperation contracts as referred to in Section 7, subsection 3, paragraph a and subsection 2, and to public service, supply and works contracts as defined in Annex A which are below the EU threshold in accordance with Section 16, subsection 1. Furthermore, provisions laid down in Section 60 concerning the legal forms of candidates and tenderers, in Section 61 concerning the participation of groups in the tendering process, in Section 63 concerning abnormally low tenders and in Section 64 concerning taking account of subsidies awarded by the contracting authority in the comparison of tenders shall apply to such contracts.
- (3) Provisions laid out in Section 35 concerning the publication requirement of contract award notices and those laid out in Sections 44—46 concerning technical specifications, technical specifications for environmental characteristics and proof provided by the tenderer shall also be applied to public service contracts mentioned in Annex B which are above the EU threshold in accordance with Section 16, subsection 1, paragraphs 1 or 2.

Section 22 — Provisions on design contents

- (1) This Act shall apply to design contests organised as part of a procedure leading to the award of a public service contract and to design contests with prizes or payments to participants.
- (2) The provisions laid down in Titles I and IV apply to design contests. Furthermore, provisions laid down in Sections 33 and 34 concerning the judges and decision making in design contests, in Section 60 concerning the legal forms of candidates and tenderers, in Section 61 concerning the participation of groups in the tendering process, in Section 63 concerning abnormally low tenders and in Section 64 concerning taking account of subsidies awarded by the contracting authority in the comparison of tenders shall apply to design contests. Contracting authorities shall submit information on design contests above the EU threshold laid down in Section 16, subsection 1, paragraphs 1 or 2 as described in Section 35, and design contests below the EU threshold as described in Section 68.

Section 23 — Provisions on public works concessions and public works contracts based thereon

- (1) The provisions laid down in Titles I and IV, and provisions concerning the contract award procedures in Chapter 5, concerning contract notices in Section 35, concerning time limits in Section 36, subsection 3 and in Section 38, subsection 2, and concerning subcontracting in Section 48 shall apply to the public works concessions above the EU threshold mentioned in Section 16, subsection 1, paragraph 3.
- (2) Provisions laid down in Titles I and IV, and provisions concerning the contract award procedures laid down in Sections 65 and 66 and concerning contract notices in Section 68 shall apply to the public works concessions below the EU threshold mentioned in Section 16, subsection 1, paragraph 3.
- (3) Where the concessionaire is a contracting authority, it shall comply with the provisions laid down in this Act in a manner defined in Section 21 when awarding a public works contract based on a public works concession to a third party.
- (4) If the concessionaire is not a contracting authority, it shall comply with the provisions laid down in Titles I and IV, and provisions concerning the time limits of contract award procedures in Section 36, subsection 3; Section 38, subsections 2 and 3; and Section 39, and provisions concerning the publication requirement in Section 35, when awarding to a third party a public works contract which is based on a public works concession and is above the EU threshold mentioned in Section 16, subsection 1, paragraph 3.
- (5) The third party mentioned in subsection 4 does not include groups set up to perform public works concessions or affiliated undertakings thereof. An affiliated undertaking shall mean any undertaking over which the concessionaire can exert a dominant influence, whether directly or indirectly, or any undertaking which can exert a dominant influence on the concessionaire or which together with the concessionaire is subject to the dominant influence of another undertaking as a result of ownership, financial participation or the rules which govern it. A dominant influence on the part of an undertaking is presumed when it:
 - (1) directly or indirectly holds a majority of the undertaking's subscribed capital;
 - (2) controls a majority of the votes attached to the shares issued by the undertaking; or
 - (3) can appoint more than half of the undertaking's administrative, management or supervisory bodies.
- (4) The exhaustive list of such undertakings shall be included in the application for the concession. Should the relationship between the undertakings change, the list shall be amended accordingly.

PART II PROVISIONS ON PUBLIC SUPPLY CONTRACTS, PRIMARY PUBLIC SERVICE CONTRACTS AS DEFINED IN ANNEX A, PUBLIC WORKS CONCESSIONS AND DESIGN CONTESTS ABOVE THE EU THRESHOLD

Chapter 5 — Contract award procedures

Section 24 — Choosing the contract award procedure

- (1) The competition procedures for public contracts shall be defined in Section 5, subsections 10—18. Open or restricted procedures shall be primarily used in awarding contracts. Negotiated procedures, directly-awarded contracts, the competitive dialogue procedure and framework agreements may be used under the conditions laid down in Sections 25—32.
- (2) In restricted procedures, negotiated procedures and in the competitive dialogue procedure, contracting authorities may limit in advance the number of suitable candidates they will invite to tender. Contracting authorities shall indicate in the contract notice the minimum number of candidates they intend to invite and, where appropriate, the maximum number. Contracting authorities shall apply the minimum requirements indicated in the contract notice and objective and non-discriminatory criteria to select the candidates they will invite to tender.
- (3) In order to ensure genuine competition, the number of candidates arrived at must be sufficient in relation to the size and subject-matter of the contract. In the restricted procedure, a minimum of five candidates shall be invited to tender, unless there are fewer than five suitable candidates. In the negotiated procedure and the competitive dialogue, a minimum of three candidates shall be invited to tender, unless there are fewer than three suitable candidates.
- (4) In the final stage of the negotiated procedure and the competitive dialogue, the number of candidates arrived at shall be sufficient for genuine competition insofar as there are enough suitable candidates or solutions.
- (5) The contracting authorities shall invite a number of candidates at least equal to the minimum number set in advance. Where the number of candidates meeting the selection criteria is below the minimum number, the contracting authority may continue the procedure by inviting those candidates that are suitable to submit a tender or commence negotiations. Only those candidates which meet the minimum criteria and have submitted a request to participate may be invited to tender.

Section 25 — Negotiated procedures

- (1) Contracting authorities may award public contracts by a negotiated procedure when they have received tenders in response to an open procedure, restricted procedure or competitive dialogue the content of which does not match the invitation to tender, or if the tenders may not be accepted under the conditions of Sections 47, 48, 50 or 52—60, provided that the initial conditions of contract in the invitation to tender are not substantially altered. Contracting authorities need not publish a new contract notice wherever they include in the negotiated procedure all of the tenderers which satisfy the minimum criteria set out in Sections 52—60 and which, during the prior procedure, have submitted tenders in accordance with the formal requirements of the tendering procedure.
- (2) Furthermore, the contracting authority may choose a negotiated procedure:
 - (1) in exceptional cases, when the nature of the procurement or the risks attaching thereto do not permit prior overall pricing;
 - (2) in the case of services, such as financial services, services involving the design of works and other expert and skills-based services, insofar as the nature of the services to be provided is such that the invitation to tender or the contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;

- (3) in respect of public works contracts, for works which are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs; and
- (4) in respect of selecting concessionaires.

Section 26 — Conduct of negotiated procedures

- (1) Contracting authorities shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements which they have set in the contract notice or invitation to tender. The purpose of the negotiations shall be to seek out the best tender in accordance with Section 62.
- (2) Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of tenders to be discussed during the negotiations by applying the award criteria, provided that the recourse to a staged procedure and the criteria applied during the negotiations are indicated in the contract notice or invitation to tender.
- (3) During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. Contracting authorities shall not provide information in a discriminatory manner which may compromise the equal treatment of the participants in the competitive bidding.

Section 27 — Direct award of contracts

- (1) Contracting authorities may award public contracts by a direct award:
 - (1) when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered;
 - (2) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular supplier;
 - (3) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by, and independent of, the contracting authorities, the provided time limits cannot be complied with;
 - (4) when the products involved are manufactured purely for the purpose of experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
 - (5) for supplies quoted and purchased on a commodity market;
 - (6) for the purchase of supplies on particularly advantageous terms, from either a supplier which is winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure;
 - (7) for public service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates; in the latter case, all successful candidates must be invited to participate in the negotiations.

Section 28 — Direct award of contracts for additional supplies

- (1) Contracting authorities may award contracts directly for additional supplies by the original supplier which are intended either as a partial replacement or an extension of the previous delivery or installation, provided that a change of supplier would oblige the contracting authority to acquire material with technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. Only in exceptional cases may the length of such contracts as well as that of recurrent contracts exceed three years.
- (2) In addition to the provisions laid down in subsection 1, contracting authorities may award contracts directly for additional works or services not included in

the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the initial supplier performing such works or services and provided that such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities or when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion. However, the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the original contract. Under the same conditions, contracting authorities may award a contract directly for additional works not included in the public works concession initially, provided that the contract is awarded to the original concessionaire.

- (3) In addition to the provisions laid down in subsections 1 and 2, contracting authorities may award a contract for new works or services directly to the original supplier, provided that such works and services are in conformity with the contract awarded earlier according to the open or restricted procedure. The aforementioned procedure may be used on condition that the contract notice for the original works or services indicates the possible use of this procedure and provided that the estimated cost of additional services or new public works shall be taken into consideration when calculating the aggregate value of the original contract. This procedure may be used only during the three years following the conclusion of the original contract.

Section 29 — Competitive dialogues

- (1) Contracting authorities may award public contracts by a competitive dialogue procedure in particularly complex contracts where:
- (1) the contracting authorities are not objectively able to specify the legal or financial conditions or technical solutions capable of satisfying their needs or objectives in accordance with Section 44, subsection 2, paragraphs 2—4; and
 - (2) the criterion for the award is that of the economically most advantageous tender.
- (2) During the dialogue, contracting authorities shall ensure the equal treatment of all tenderers. Contracting authorities shall not provide information in a discriminatory manner which may compromise the equal treatment of the participants in competitive bidding.
- (3) Contracting authorities may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without the agreement of the candidate or tenderer.
- (4) The contracting authorities may specify prices or payments or award prizes to the participants in the dialogue.

Section 30 — Conduct of competitive dialogues

- (1) Contracting authorities shall publish a contract notice setting out their needs and requirements for the contract. Contracting authorities may further define the objective and content of the contract in a project description document.
- (2) Contracting authorities shall initiate, with the candidates selected in accordance with the provisions of Sections 52—59, a dialogue the aim of which shall be to define one or more solutions to realise the contract. They may discuss all aspects of the contract with the candidates during this dialogue.
- (3) By applying the comparison criteria of the tender, contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage. The contract notice or the project description shall indicate the recourse to a staged procedure and the applied criteria.
- (4) The contracting authority shall conclude the dialogue when it can identify solutions which are capable of realising the contract. The contracting authority shall inform the participants of the conclusion of the dialogue.

- (5) The contracting authority shall ask the candidates to submit their final tenders on the basis of the solutions presented and specified during the dialogue. The tender shall contain all the elements required for the performance of the project in accordance with the invitation to tender.
- (6) Contracting authorities shall assess the tenders on the basis of the comparison criteria indicated in the contract notice or the project description. Contracting authorities shall set the comparison criteria and award the contract in accordance with the provisions laid down in Section 62.
- (7) The tenders may be clarified and specified at the request of the contracting authorities. However, such clarification or specification may not involve changes to the basic features of the tender or the invitation to tender in a manner that may distort competition or have a discriminatory effect. On the same conditions, the contracting authority may ask the tenderer to clarify or specify aspects of, or confirm commitments contained in, the winning tender.

Section 31— Framework agreements

- (1) Contracting authorities shall choose the suppliers for the framework agreement by open or restricted procedures. Contracting authorities may also choose the suppliers for the framework agreement by a negotiated procedure pursuant to the provisions of Section 25 or by awarding the contract directly pursuant to the provisions of Section 27. The suppliers for the framework agreement shall be admitted by applying the award criteria set in accordance with Chapter 8. Where a framework agreement is concluded with several suppliers, a minimum of three suppliers shall be selected, unless there are fewer suitable suppliers and admissible tenders which meet the award criteria.
- (2) Contracts based on framework agreements shall be concluded with the original parties to the agreement. During the term of the agreement the parties may not make substantial amendments to the terms laid down in the framework agreement. The framework agreement may not be used in such a way as to distort, restrict or prevent competition.
- (3) The term of the framework agreement may not exceed four years, save in exceptional cases duly justified by the subject of the framework agreement.

Section 32 — Contracts based on framework agreements

- (1) Where a framework agreement is concluded with a single supplier, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. Contracting authorities may consult the supplier, requesting it to specify or supplement the tender in writing as necessary.
- (2) Contracts based on framework agreements concluded with several suppliers may be awarded either by application of the terms laid down in the framework agreement without reopening competition or, where not all of the terms are laid down in the framework agreement, inviting the parties to the framework agreement to tender in accordance with the terms of the framework agreement and, where appropriate, with the terms of the call for tenders. Where necessary, the terms of the framework agreement may be clarified or specified.
- (3) Contracting authorities shall ask all the parties to the framework agreement capable of performing the contract to submit a tender in writing. Contracting authorities shall fix a time limit which is sufficiently long to allow tenders to be submitted, taking into account the complexity of the subject-matter of the contract, the time needed to send in the tender and other, similar factors. The content of the tenders shall remain confidential until the stipulated time limit for reply has expired. Contracting authorities shall choose the best tender in accordance with the award criterion and comparison criteria indicated in the invitation to tender.

Section 33 — Design contests

- (1) The rules for the design contests shall be available to those interested in participating in the contest. The admission of participants to design contests may not be restricted on regional grounds or on the grounds that the participants would be required to be either natural or legal persons.
- (2) Where design contests are restricted to a limited number of participants, previously indicated and non-discriminatory criteria shall be followed. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

Section 34 — Composition and decisions of the jury

- (1) Design contests shall have a jury, the members of which shall be composed of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.
- (2) The jury shall be autonomous in its decisions or opinions. It shall examine the indicated in the contest notice. Anonymity must be observed until the jury has reached its opinion or decision.
- (3) Candidates may be invited, if need be, to answer questions which the jury has recorded in the minutes to clarify aspects of the plans. Complete minutes shall be drawn up of the dialogue between jury members and candidates. The jury shall record its assessment of the plans in the minutes, signed by each member, which shall include the ranking and merits of plans, remarks by the jury and any points which may need clarification.

Chapter 6 — **Time limits and mandatory publication of public contracts**

Section 35 — Publication requirement

- (1) Contracting authorities shall send for publication the prior information notice and contract notice, the design contest notice, public works concession notice and contract award notice in accordance with the provisions laid down in a Government decree. In addition, if the concessionaire is not a contracting authority, it shall send for publication a contract notice for the public works based on a public works concession.
- (2) Contract notices shall be sent for publication to a body defined by the Ministry of Trade and Industry.
- (3) More specific rules concerning the publication requirement, the means of communication to send the notices, the content of notices, their publication and other aspects of the publication requirement as specified in the Directive on public contracts and mentioned in this Section shall be laid down in a Government decree.

Section 36 — Minimum time limits and fixing the time limits

- (1) When fixing time limits for tendering procedures, contracting authorities shall take account of the subject-matter and complexity of the contract and the time required for drawing up and sending in tenders. The time limits shall be run from the date following the date on which the contract notice is sent for publication. In the case of restricted procedures, the time limit for the receipt of tenders shall run from the date when the invitation to tender is sent.
- (2) In the case of restricted procedures, negotiated procedures and the competitive dialogue, the minimum time limit for the submission of requests to participate shall be 37 days. The minimum time limit for the submission of tenders shall be 52 days in the case of open procedures and 40 days in the case of restricted procedures.

- (3) In the case of public works concessions, the minimum time limit for the submission of requests to participate shall be 52 days. Where the concessionaire is not a contracting authority, the minimum time limit for the submission of requests to participate in a public works contract based on a public works concession shall be 37 days. The minimum time limit for the submission of tenders shall be 40 days from the date on which the invitation was sent.

Section 37 — Accelerated procedures

In the case of restricted procedures or negotiated procedures, the time limits laid down in Section 36 may be shortened if urgency renders them impracticable. However, a time limit for the receipt of the requests to participate shall be no less than 15 days, or no less than 10 days if the notice was sent by electronic means. In the case of restricted procedures, the minimum time limit for the receipt of tenders shall be 10 days.

Section 38 — Shortening of the time limits

- (1) In open and restricted procedures, the time limit for the receipt of tenders may be shortened to no less than 22 days, if the contracting unit has sent the prior information notice for publication between 52 days and 12 months before the date on which the contract notice was sent for publication.
- (2) Where notices are transmitted for publication by electronic means, the time limit for the receipt of tenders in open procedures, and the time limit for the receipt of requests to participate in restricted and negotiated procedures and in the competitive dialogue, may be shortened by seven days.
- (3) The time limit for the receipt of tenders referred to in subsection 2 may be further reduced by five days in open and restricted procedures, where the contracting authority offers full access by electronic means to the contract documents from the date of publication of the notice, specifying in the text of the notice the internet address at which this documentation is accessible.

Section 39 — Extension of the time limits

If, for whatever reason, the documents relating to the invitation to tender or additional information, although requested in good time, are not supplied within the set time limits, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the invitation to tender, the time limits for the receipt of tenders shall be extended so that suppliers may be aware of the information needed to produce tenders.

Chapter 7 — Invitation to tender and defining the object of the contract

Section 40 — Invitation to tender

Invitations to tender shall be submitted in writing and drawn up to be sufficiently clear in order to enable submission of commensurate and mutually comparable tenders. The invitation to tender or the contract notice shall invite suppliers to submit their tenders in writing by the deadline.

In case of discrepancy between the invitation to tender and the contract notice, the contract notice shall apply.

Contracting authorities are entitled, within reason, to charge for obtaining the invitation documentation to recover costs arising from the exceptionally extensive scope, materials of the documentation or similar factors.

Section 41 — Content of the invitation to tender

- (1) The invitation to tender or, where applicable, the contract notice shall include:
- (1) a definition of the object of the contract in accordance with the provisions laid down in Sections 44 and 45 concerning technical specification and submitting requests, and any other quality requirements relating to the object of the contract.
 - (2) a reference to the contract notice published;
 - (3) the deadline for the receipt of the tenders;
 - (4) the address to which the tenders must be sent;
 - (5) the language or languages in which the tenders must be drawn up;
 - (6) proof of satisfying the requirements relating to the candidates' or suppliers' economic and financial standing, technical capacity and professional ability and other requirements and a list of documents which the candidate or supplier must furnish to provide this;
 - (7) the award criterion and, where the criterion for the award is that of the economically most advantageous tender, the comparison criteria for the award and the relative weighting given to each of the criteria or a reasonable range or, in exceptional cases, the ranking of the comparison criteria; and
 - (8) the period of validity for tenders.
- (2) Furthermore, the invitation to tender or the contract notice shall indicate any other information with particular importance to the tendering procedure and submitting tenders.

Section 42 — Sending invitations to tender or making them available for candidates and tenderers

- (1) In open procedures, contracting authorities shall send the invitation to tender, within six days of receipt of the request to participate, to the candidate requesting it, provided that the request was made in good time before the deadline for the submission of tenders. Alternatively, contracting authorities may offer full access by electronic means to the invitation to tender from the date of publication of the contract notice at the internet address specified in the notice.
- (2) In restricted procedures, negotiated procedures and in the competitive dialogue procedure, the invitation to tender shall be sent only to the candidates which the contracting authority has admitted to the tendering procedure. The invitation to tender shall be sent simultaneously to all of the candidates.
- (3) In open procedures, the contracting unit shall send the supplementary documents of the invitation to tender not later than six days before the deadline fixed for the receipt of tenders. In the event of a restricted or accelerated procedure and a negotiated procedure, the supplementary information shall be sent not less than four days before the deadline fixed for the receipt of tenders, provided that it is requested in good time.

Section 43 — Invitation to negotiate

- (1) In negotiated procedures and in the competitive dialogue, the invitation to participate in negotiations shall include the invitation to tender or, if appropriate, a project description or an address from which those documents may be requested, the deadline for requesting such documents and, if applicable, the sum payable for obtaining them and any arrangements for payment.
- (2) The invitation to tender shall include the information referred to in Section 41, subsection 1. However, the invitation to negotiate in the competitive dialogue does not have to state the time limit for the receipt of tenders, although it must indicate the start date of the negotiations, the address at which the negotiations will be held and the language in which they will be conducted.

Section 44 — Technical specification of contracts

- (1) Technical specifications for the content of the contract shall be stated in the contract notice or the invitation to tender. Technical specifications shall afford equal access for tenderers to participate in the competition. Technical specifications may not have the effect of creating unjustified obstacles to competitive tendering. Whenever possible, technical specifications should be defined so as to take account of the needs of people with disabilities.
- (2) Technical specifications shall be formulated:
 - (1) by reference to a Finnish or other national standard transposing European standards, European technical approvals, official technical specifications, international standards or technical references or, when these do not exist, to national standards, national technical approvals or national designs, calculations or the execution of the works or technical documents relating to the manufacture of products; each reference shall be accompanied by the words "or equivalent".
 - (2) in terms of the performance of functional requirements, which are sufficiently precise to allow the definition of the subject-matter and award of the contract;
 - (3) by referring to the technical specifications mentioned in paragraph 1 for certain characteristics and by referring to the requirements mentioned in paragraph 2 for certain characteristics; or
 - (4) in terms of performance or functional requirements with reference to the specifications mentioned in paragraph 1 as a means of presuming conformity with such performance or if they are in conformity with requirements related to performance, or functional requirements.
- (3) Technical specifications shall not refer to a specific make or source of products. Technical specification shall not refer to trade marks, patents, product types, origin, a specific method or production with the effect of favouring, or discriminating against, certain suppliers or products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract is not possible. Such reference shall be accompanied by the words "or equivalent".

Section 45 — Technical specifications referring to environmental characteristics

- (1) The performance and functional requirements referred to in Section 44, subsection 2, paragraph 2 may include requirements for environmental characteristics. Contracting authorities may use the detailed specifications or, if necessary, parts thereof, as defined by European or multinational eco-labels or by any other eco-label.
- (2) Conditions for the use of the specifications, or parts thereof, as defined by eco-labels are that:
 - (1) those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract;
 - (2) the requirements for the label are drawn up on the basis of scientific information;

- (3) stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate in the procedure to draw up the label; and
 - (4) the label is accessible to all interested parties.
- (3) Contracting authorities may indicate that the products and services bearing the eco-label are presumed to comply with the requirements for environmental characteristics. However, contracting authorities must accept any other appropriate means of proof submitted by the tenderer, such as a technical dossier of the manufacturer or a test report from a recognised body.

Section 46 — Proving compliance with the requirements of the tender

- (1) The tenderer shall prove in his tender that the proposed supplies, services or satisfy the requirements set down in the invitation to tender or for the tendering procedure shall be excluded from the competition.
- (2) Where a contracting authority has drawn up the technical specification in accordance with Section 44, subsection 2, paragraph 1 and the tenderer proves in his tender to the satisfaction of the contracting authority, by whatever appropriate means, that the supplies, services or works which he proposes satisfy the requirements defined by the technical specifications, the contracting authority cannot reject a tender on the grounds that the supplies, services or works tendered for do not comply with the specifications to which it has referred. The appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body in Finland or another European Union member state.
- (3) Where a contracting authority has drawn up technical specifications in terms of performance or functional requirements, it may not reject a tender on the grounds that the tender does not comply with the specifications to which it has referred, if the proposed products, services or works comply with a national standard transposing a European standard, with a European technical approval, an official technical specification, an international standard or a technical reference and these specifications address the performance or functional requirements which it has laid down in the invitation to tender. In his tender, the tenderer must prove to the satisfaction of the contracting authority that the product, service or work in compliance with the standard meets the performance or functional requirements of the contracting authority. The appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body in Finland or another European Union member state.

Section 47 — Alternative tenders

- (1) Where the criterion for the award is that of the economically most advantageous tender, contracting authorities may accept alternative tenders, provided that the contract notice indicates that variants are authorised. Furthermore, the alternative tender must satisfy the minimum requirements set in the invitation to tender for the object of tender and the requirements for presenting alternatives.
- (2) If the contracting authority has indicated that it shall accept the submission of alternative tenders, it may not reject the alternative on the sole ground that it would lead to a service contract instead of a supply contract or a supply contract instead of a service contract.

Section 48 — Subcontracting

- (1) The contracting authority may ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties and any proposed subcontractors. This indication shall be without prejudice to the question of the principal supplier's liability for performing the contract.

- (2) The contracting authority may require the concessionaire to award contracts representing a minimum of 30 % of the total value of the work for which the concession contract is to be awarded, to a subcontractor, at the same time providing the option for candidates to increase this percentage. This minimum percentage must be specified in the concession contract. The contracting authority may request that candidates specify in their tenders the percentage of the total value of the work for which the concession contract is to be awarded and which they intend to assign to third parties.

Section 49 — Special conditions relating to public contracts

- (1) Contracting authorities may lay down special conditions relating to the performance of a contract which may, in particular, be intended to favour environmental and social aspects, such as on-site vocational training, compliance with the provisions of the International Labour Organisation (ILO) conventions, working conditions and employment terms or the recruitment of people with disabilities, provided that the conditions are non-discriminatory and compatible with Community law and that they are indicated in the contract notice or the invitation to tender.
- (2) A public works contract awarded by a central government authority to a private employer shall be accompanied by a clause, added to the contract before the contract is signed, according to which the employment contracts relating to the public works contract shall comply with the minimum terms of employment which must be observed in similar work pursuant to Finnish law and collective agreements.

Section 50 — Obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions

- (1) A contracting authority may state in the contract notice the bodies from which a tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions, to the working conditions or terms of employment. A contracting authority shall request that the tenderers indicate that they have taken account, when drawing up the tender, of the aforementioned obligations.
- (2) The provisions of subsection 1 shall be without prejudice to the application of the provisions of Section 63 concerning the examination of abnormally low tenders.

Section 51 — Communication

- (1) All communication and information exchanged may be by post, by fax or by electronic means according to the choice of the contracting authority. The means of communication chosen must be generally available and not restrict the suppliers' access to the tendering procedure.
- (2) More specific rules on the requirements relating to methods of communication and technical and other requirements for electronic communication referred to in the Directive on public contracts and Annex X thereof shall be laid down in a Government decree.

Chapter 8 — Admission of candidates and tenderers and selection of tenders

Section 52 — Verification of the suitability of candidates and tenderers

Exclusion from competitive bidding of candidates or tenderers, verification of the suitability of candidates and tenderers and selection of the successful tenders shall be carried out before

the tenders are compared. However, in accordance with Section 53 or 54, a candidate or tenderer may be excluded from participation in competitive bidding later during the competition when the contracting authority has been made aware of the criterion for exclusion.

Section 53 — Exclusion from the competition of candidates and tenderers convicted of certain offences

- (1) The contracting authority shall exclude a candidate or tenderer from the competitive bidding if it has gained knowledge that the candidate or tenderer or director or any person having powers of representation, decision or control in respect of the candidate or tenderer has been the subject of a conviction by judgement that has obtained the force of *res judicata* and is specified in a criminal record for one or more of the reasons listed below:
- 1) participation in a criminal organisation as defined in Chapter 17, Section 1 a of the Penal Code of Finland (Finnish Statute Series No 39/1889);
 - 2) bribery as defined in Chapter 16, Section 13; aggravated bribery as defined in Chapter 16, Section 14 or bribery in business as defined in Chapter 30, Section 7 of the Penal Code of Finland.
 - 3) tax fraud as defined in Chapter 29, Section 1 or aggravated tax fraud as defined in Chapter 29, Section 2; subsidy fraud as defined in Chapter 29, Section 5; aggravated subsidy fraud as defined in Chapter 29, Section 6; subsidy misuse as defined in Chapter 29, Section 7 of the Penal Code of Finland.
 - 4) money laundering as defined in Chapter 32, Section 6 or aggravated money laundering as defined in Chapter 32, Section 7 of the Penal Code of Finland; or
 - 5) work discrimination through undue influence as defined in Chapter 47, Section 3 a of the Penal Code of Finland.
- Candidates or tenderers sentenced to a corporate fine as defined in Chapter 9 of the Penal Code of Finland for a reason mentioned in subsection 1 shall be excluded from the competitive bidding.
- (2) The contracting authority shall exclude a candidate or tenderer from the competitive bidding if the candidate or tenderer has been the subject of a conviction by judgement that has the force of *res judicata* in another state for a reason analogous to those mentioned in subsection 1. In the European Community member states, the provisions shall apply to the following crimes defined in Community law:
- (1) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union;
 - (2) corruption, as defined in Article 3 of the Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, and Article 2(1) (a) of Council Framework Decision 2003/568/JHA on combating corruption in the private sector;
 - (3) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities; and
 - 8iv) money laundering, as defined in Article 1 of Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.
- (3) A derogation from the requirement to exclude from the participation in competitive bidding a candidate or tenderer who has been the subject of a conviction for a reason referred to in this Section may be provided for overriding requirements in the general interest or under the condition that the convicted person no longer holds a responsible position in the undertaking submitting the tender.

Section 54 — Other criteria for exclusion

- (1) The contracting authority may exclude from participation in competitive bidding a candidate or tenderer which:

- (1) is bankrupt or is being wound up or has ceased operations, where he has entered into an arrangement with creditors or a reorganisation plan or is in any analogous situation arising from a similar procedure under the law;
 - (2) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or of proceedings for other procedures referred to in paragraph 1;
 - (3) has been convicted by judgement that has the force of res judicata of any offence concerning his professional conduct;
 - (4) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;
 - (5) has not fulfilled obligations relating to the payment of taxes or social security contributions in Finland or in the country in which he is established;
 - (6) is guilty of serious misrepresentation in supplying the information to the contracting authority required to apply the provisions of Chapter 8 or has not supplied such information.
- (2) The provisions laid down in subsection 1, paragraphs 3 and 4 shall apply in cases where the person convicted of a mistake or negligence is a director and any person having powers of representation, decision or control in respect of the candidate or tenderer. The decision for the exclusion may take account of other matters, such as the seriousness of the offence or omission, the connection with the object of the contract, the time lapsed, any other implications from the offence and any remedial action taken by the person convicted of the offence or omission.

Section 55 — Verifying the criteria for exclusion

- (1) Contracting authorities may request that the candidates and tenderers and the competent authorities of other member states, in accordance with the appropriate regulations, submit evidence and clarifications in order to verify whether the exclusion criterion referred to in Section 53 or 54 applies to the candidate or tenderer.
- (2) As regards Section 53 and Section 54, subsection 1, paragraph 3, contracting authorities shall accept as evidence an extract from the criminal record issued by a competent authority in the country in which the tenderer is established. As regards section 54, subsection 1, paragraphs 1, 2 and 5, contracting authorities shall accept as evidence a certificate issued by the competent authority.
- (3) Where the country in which the candidate or tenderer is established does not issue such documents they may be replaced by a declaration on oath or by a solemn declaration under the law of the country in which the representative of the candidate or tenderer is established.

Section 56 — Requirements and references relating to the suitability of candidates and tenderers

- (1) Contracting authorities may set requirements relating to the candidates' or tenderers' financial and economic standing, technical capacity and professional ability and quality and request that the candidates or tenderers submit the related references.
- (2) In order to verify the requirements and that the requirements are satisfied, the requested references shall relate to the candidate's or tenderer's ability to perform the contract. Requirements shall be in proportion to the subject-matter, purpose and scope of the contract. Requirements and references shall be indicated in the contract notice. Candidates or tenderers failing to satisfy the minimum requirements set by the contracting authority shall be excluded from participation in competitive bidding.
- (3) Contracting authorities shall indicate in the contract notice any objective and non-discriminatory criteria and rules, which they shall apply in restricted procedures, negotiated procedures or in the competitive dialogue to admit candidates and tenderers to the tendering procedure or negotiations. Contracting authorities shall state the minimum number of candidates and, where appropriate, the maximum number of candidates.

- (4) Contracting authorities may invite candidates or tenderers to supplement or clarify the references and other documents.

Section 57 — Register data

Contracting authorities may request that a candidate or tenderer prove under the law of the country in which he is established that:

- (1) he is registered in a professional or trade register, by providing an extract from the register;
- (2) he carries out a trade by providing a declaration on oath or a certificate; and
- (3) he is entitled to provide a service in the country in which he is established by providing a license or a certificate of membership of an organisation.

Section 58 — Economic and financial standing

- (1) Contracting authorities may request that a candidate or tenderer furnish proof of his financial and economic standing by references such as:
- (1) a statement from bank or credit institution or evidence of professional risk indemnity insurance;
 - (2) the presentation of a profit and loss account, annual report, other annual accounts and group annual accounts, if these must be published in the country in which the candidate or tenderer is established; and
 - (3) a statement of the undertaking's overall turnover and turnover in the area information on these turnovers is available.
- (2) If, for any valid reason, the candidate or tenderer is unable to provide the references requested by the contracting authority, he may prove his economic and financial standing by any other document which the contracting authority considers appropriate.

Section 59 — Technical capacity and professional ability

- (1) Contracting authorities may request that a candidate or tenderer furnish proof of his technical capacity and professional ability by the following documents:
- (1) the educational and professional qualifications of the candidate or tenderer or those of the undertaking's managerial staff and, in particular, those of the persons responsible for providing the services or managing the work;
 - (2) a list of the works carried out over a period not exceeding the past five years, accompanied by a certificate of satisfactory execution for the most important works; the certificate shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed; where appropriate, the competent authority shall submit these certificates to the contracting authority directly;
 - (3) a list of the principal deliveries effected or the main services provided over a period not exceeding the past three years, with the sums, dates and recipients involved; where the recipient was a public corporation, the list shall be verified by the competent authority; where the recipient was a private purchaser, by the purchaser's certification or, failing this, by a declaration by the candidate or tenderer;
 - (4) an indication of the technical experts or bodies involved, whether or not they belong directly to the candidate or tenderer, especially those responsible for quality control and, in the case of public works contracts, those experts and bodies upon whom the contractor can call in order to carry out the work;
 - (5) for supply and service contracts, a description provided by the candidate or tenderer of the technical facilities for ensuring quality and the study and research systems;
 - (6) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a certificate for the check carried out by the candidate or tenderer or on his behalf by a competent official body of the country in which the candidate or tenderer is established on the production capacities of the candidate or tenderer or the technical capacity of the service provider and on the means of study and research which are available to it or the quality control measures it will operate;

- (7) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last three years at a maximum;
 - (8) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
 - (9) an indication of the proportion of the contract which the tenderer intends to subcontract;
 - (10) with regard to the products to be supplied, samples, descriptions, and photographs, the authenticity of which must be certified if the contracting authority so requests, and certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products to be supplied, identified by references to technical specifications or standards; and
 - (11) with regard to public contracts having as their object supplies requiring siting or installation work, an indication of professional ability, efficiency, experience and reliability.
- (2) If appropriate for the object of the contract, the contracting authority may request that the candidate or tenderer provide an indication of the environmental management measures that can be applied when performing a public works or service contract. Should contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the tenderer with environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. Contracting authorities shall accept equivalent certificates from bodies established in other European Union member states and other evidence of equivalent environmental management measures from the suppliers.
- (3) If appropriate for the object of the contract, the contracting authority may request that the candidate or tenderer provide an indication of the quality assurance measures. Should they require the production of certificates drawn up by independent bodies attesting to the compliance of the tenderer with quality assurance standards, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. Contracting authorities shall accept equivalent certificates from bodies established in other European Union member states and other evidence of equivalent quality assurance measures from the tenderers.

Section 60 — Legal forms of candidates and tenderers and indication of responsible persons

- (1) Candidates or tenderers who, under the law of the country in which they are established, are entitled to provide the relevant services, shall not be rejected solely on the ground that, under the law of the European Union member state in which the contract is awarded, they would be required to be either natural or legal persons.
- (2) In the case of public service and public works contracts as well as public supply contracts involving siting and installation operations, candidates and tenderers may be required by the contracting authority to indicate in the tender or the request to participate, the names and relevant professional qualifications of the persons responsible for the performance of the contract in question.

Section 61 — Groups participating in the tendering procedure and reliance on the capacities of other entities

- (1) Groups of suppliers may submit tenders or put themselves forward as candidates. In order to submit a tender or a request to participate, these groups of candidates or tenderers may not be required by the contracting authorities to assume a specific legal form. However, the group may be required to do so during the term of the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

- (2) A candidate or tenderer may rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. A group may rely on the abilities of participants in the group or in other entities in order to perform the contract. The candidate or tenderer or a group thereof shall furnish the contracting authority with proof that the requirements relating to economic and financial standing, technical capacity and professional ability and other requirements are satisfied. This proof may include contracts between companies or other binding documents demonstrating that the capacities satisfy the requirements and are accessible by the candidates or tenderers or the group.

Section 62 — Selecting the tender

- (1) The awarded contract shall be either the economically most advantageous tender from the point of view of the contracting authority in accordance with the comparison criteria linked to the object of the contract, or the lowest price. When the award is made to the economically most advantageous tender, the criteria may include, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion or life cycle costs.
- (2) In addition to the provisions laid down in subsection 1, while assessing the economically most advantageous tender, the contracting authority may take account of economic and qualitative criteria to meet the needs of the public concerned, and environmental requirements, provided that these criteria are measurable and linked to the object of the contract. Under the same conditions, the contracting authority may use criteria aiming to meet the needs of particularly disadvantaged groups of people using the object of the contract, provided that these factors are defined in the technical specifications.
- (3) The contracting authority shall specify in the contract notice or in the documents relating to the invitation to tender the comparison criteria and the relative weighting which it gives to each of the criteria chosen to determine the economically most advantageous tender. In the competitive dialogue, the equivalent information shall be specified in the contract notice or the project description. The weighting may also be specified by a reasonable range. If the relative weighting of the comparison criteria is justifiably not possible, the comparison criteria shall be specified in the order of importance.

Section 63 — Abnormally low tenders

- (1) Contracting authorities may reject tenders that are abnormally low in relation to the quality and scope of the contract. Before it may reject the tender, the contracting authority shall request in writing details of the constituent elements of the tender.
- (2) The request referred to in subsection 1 may relate in particular to the economic and technical solutions chosen for the manufacture of the goods, supply of the service or execution of the work, exceptionally favourable conditions for the execution of the contract, the originality of the proposed solution, employment protection at the place where the contract is executed and compliance with the provisions relating to working conditions or the possibility of the tenderer obtaining state aid. The contracting authority shall verify the constituent elements of the tender, taking account of the evidence supplied.
- (3) The contracting authority may reject a tender which is abnormally low because the tenderer has obtained state aid illegally. The tender can be rejected only after a sufficient time limit has been fixed for the tenderer to prove that the state aid in question was granted legally.

Section 64 — Taking account of a subsidy awarded by the contracting authority in the comparison of tenders

Where the tenderer is an entity belonging to the contracting authority's organisation or if the contracting authority has granted or will grant the tenderer a financial subsidy which will affect the price of the tender, in the comparison of the tenders the contracting authority shall

take into account the factors which shall genuinely affect the price of the tender paid by the contracting authority, such as the financial subsidy in question.

PART III NATIONAL PROCEDURES

Chapter 9 — Tendering procedures for contracts below the EU threshold, for secondary service contracts referred to in Annex B and for certain other contracts

Section 65 — Contract award procedures

- (1) The contract award procedures specified in this chapter may be used for contracts below the EU threshold and, independent of the EU thresholds, for the secondary service contracts referred to in Annex B, for service concessions and for design contests in accordance with Chapter 4.
- (2) The competition procedures for public contracts shall be defined in Section 5, subsections 10—18. Open or restricted procedures shall be primarily used in awarding contracts. Contracting authorities may apply the negotiated procedure in accordance with the provisions laid down in Section 25, subsection 1 and Section 66 and award contracts directly in accordance with provisions laid down in Section 67. The competitive dialogue procedure and framework agreements may be used under the conditions laid down in Sections 29—32.

Section 66 — Negotiated procedures

- (1) Contracting authorities may use negotiated procedures in public supply and service contracts the estimated aggregated value of which is less than EUR 50,000, and in public works contracts the estimated aggregated value of which is less than EUR 500,000.
- (2) Furthermore, the contracting authority may choose a negotiated procedure:
 - (1) where the nature of the contract is such that the invitation to tender cannot be established, or it is not appropriate to establish the invitation to tender, with sufficient precision to permit the award of the contract by the selection of the best tender according to the rules governing open or restricted procedures;
 - (2) in exceptional cases, when the nature of the purchase or the risks attaching thereto do not permit prior overall pricing;
 - (3) in respect of contracts related to research, reporting, planning, assessment and training, which require special assessment of the expertise and ability of the persons responsible for the provision of the service;
 - (4) in respect of contracts related to the partnership arrangements of an individual project between the public and the private sector or contracts related to a permanent partnership agreement and long-term contracts;
 - (5) in respect of public service contracts centralised nationally or regionally in the social and health care sector;
 - (6) in respect of contracts requiring multi-professional special expertise, particularly in the social and health care sector;
 - (7) in respect of particularly urgent contracts, for which the contracting authority may not have reasonably been able to prepare;
 - (8) in respect of service concessions and the award of public works concessions; and
 - (9) in respect of contracts which are performed solely for the purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.
- (3) Before the tendering procedure, contracting authorities shall draw up a description of the objectives and main content of the contract. Contracting authorities may provide for the procedure to take place in successive stages by reducing the number of candidates or tenderers. The contract notice, contract description or the invitation to tender shall indicate the recourse to a stage procedure and the criteria applied to reduce the number of candidates or

tenderers. The contracting authority shall negotiate with a minimum of three candidates, provided a sufficient number of suitable candidates are available.

Section 67 — Direct award of contracts

Contracting authorities may award contracts directly in accordance with the provisions laid down in Sections 27 and 28. Furthermore, direct award of contracts may be used in individual cases in contracts for the social services, health care and education and training, if the arrangements for the competitive bidding, use of the negotiated procedure or change of the service provider would be manifestly unreasonable or particularly inappropriate from the point of view of the client in order to safeguard a significant care or client relationship.

Section 68 — Publication of contracts

- (1) Contracting authorities shall make public any contracts opened to competition through open or restricted procedures, negotiated procedures or the competitive dialogue, service concessions and public works concessions. Furthermore contracting authorities shall also make public framework agreements and design contests.
- (2) More specific rules concern the means of communication used to send the notices, content of notices, publication and other aspects of the publication requirement.

Section 69 — Invitation to tender

- (1) Invitations to tender shall be drawn up to be sufficiently clear, enabling candidates to submit commensurate and mutually comparable tenders. The invitation to tender or the contract notice shall invite suppliers to submit their tenders by the deadline.
- (2) The invitation to tender or, where applicable, the contract notice shall include:
 - (1) the object of the contract in accordance with, where appropriate, the provisions concerning technical specifications laid down in Sections 44 and 45.
 - (2) proof of satisfying the requirements relating to the candidates' or suppliers' economic and financial standing, technical capacity and professional ability and other requirements and a list of documents which the candidate or supplier must furnish to provide this;
 - (3) the award criterion and, where the criterion for the award is that of the economically most advantageous tender, the comparison criteria and the ranking thereof;
 - (4) the deadline for the receipt of the tenders;
 - (5) the address to which the tenders must be sent; and
 - (6) the period of validity for tenders.
- (3) Furthermore, the invitation to tender shall indicate any other information with particular importance to the tendering procedure and submitting tenders. The provisions laid down in Chapter 7 shall apply, where applicable, to the drawing up of the invitation to tender. In order to assess the suitability of the candidates and tenderers, the provisions laid down in Sections 55—59 may be applied, where applicable, to the required references.
- (4) In case of discrepancy between the invitation to tender and the contract notice, the contract notice shall apply.

Section 70 — Drawing up the invitation to tender and sending it to suppliers

- (1) The invitation to tender and any tenders based thereon shall be drawn up in writing. The invitation to tender and the tenders may be submitted verbally only in exceptional cases in negotiated procedures or the direct award of contracts, such as in particularly urgent contracts, where it would not be justifiably appropriate to use a written procedure. If the invitation to tender or the tenders are not drawn up in writing, minutes of the negotiations shall be written, citing the information affecting the conduct of the procedure and the standing of the tenderers.
- (2) In respect of open procedures, the invitation to tender shall be sent without delay to the suppliers who have requested it, or made available to the suppliers

through electronic means. In respect of other tendering procedures, the invitation to tender shall be sent to candidates admitted to the tendering procedure. The invitation to tender shall be sent simultaneously to all of the candidates.

- (3) A reasonable time limit shall be fixed with respect to the scope and quality of the contract in order for the tenderers to submit tenders.

Section 71 — Selection of tenderers

- (1) In restricted procedures, negotiated procedures and in the competitive tendering, tenderers shall be selected, and the suitability of the candidates and tenderers assessed in all tendering procedures, following previously indicated criteria linked to the tenderers' economic or financial standing, technical capacity or professional ability or following other objective and non-discriminatory criteria.
- (2) Candidates or tenderers which do not satisfy the technical, financial or other criteria to perform the contract shall be excluded from the competitive bidding. In order to exclude candidates and tenderers from the competitive bidding, the provisions concerning the assessment of suitability of candidates and tenderers laid down in Sections 52—59 shall may be applied, where applicable.

Section 72 — Award of contracts

- (1) The contract shall be awarded to the tenderer whose tender is the economically most advantageous tender from the point of view of the contracting authority, or has the lowest price. The comparison criteria for the assessment of the economically most advantageous tenders shall be linked to the object of the contract and enable impartial assessment of tenders. In respect of public service contracts or public works contracts where the expertise, professional ability and competency of the persons responsible for providing the service or executing the works bears particular significance, the comparison criteria for performing the contract may include levels of quality control, competence, experience and professional ability that exceed the minimum criteria applied to assess the suitability of tenderers.
- (2) Where the criterion for the award is that of the economically most advantageous tender, the assessment criteria shall be specified in the order of priority in the contract notice or the invitation to tender. Where applicable, contracting authorities may set the comparison criteria in accordance with the provisions laid down in Section 62.

PART IV GENERAL PROVISIONS ON DECISIONS CONCERNING AWARDING, ENTERING INTO CONTRACTS, REMEDIES AND FURTHER PROVISIONS

Chapter 10 — Decisions concerning the award of contracts and the contract document

Section 73 — Decisions concerning the award of contracts and notification thereof

- (1) The contracting authority shall provide in writing the decisions concerning the position of the candidates and tenderers and the results of the tendering procedure, including the grounds for the decisions. The decision shall include written instructions on the referral of the matter to the Market Court ("petition instructions"). The decision and the grounds thereof and the petition instructions shall be submitted in writing to the parties concerned. Unless proved otherwise, candidates and tenderers shall be deemed to have been informed of the decision and the petition instructions no earlier than seven days after they are sent

- (2) The provisions concerning appeal instructions provided for in Chapter 3 of the Administrative Judicial Procedure Act (586/1996) shall apply to the petition instructions, where applicable.

Section 74 — Concluding a contract

Having awarded the contract, the contracting authority shall conclude the contract in writing. In respect of contracts above the EU threshold as defined in Section 16, the contract may be concluded and the decision implemented no later than 21 days after the candidate or tenderer has been informed or is deemed to have been informed of the decision and the petition instructions. However, the contract may be concluded earlier if strictly necessary for overriding reasons in the general interest or for reasons brought about by events unforeseeable by, and independent of, the contracting authorities.

Section 75 — Application of provisions concerning the transparency of documents

- (1) The Act on the openness of government activities (621/1999) shall apply to the transparency of the contracting authority's documents, payments for obtaining the documents and a party's right to obtain information, insofar as the contracting authority is the authority defined in Section 4 of the aforementioned Act or if it must comply with the Act, pursuant to provisions laid down elsewhere in law..
- (2) Where the contracting authority organising the competitive bidding does not fall within the meaning of subsection 1, the provisions laid down in the Act on the openness of government activities concerning the party's rights concerning documents, rules on the transparency of documents, and the procedure and decisions concerning access to information, shall apply to the right of the participants to be informed of the documents drawn up and received for the purposes of the tendering process and the confidentiality rule concerning the employees of the contracting authority.
- (3) Appeals against a decision reached by the contracting authority on the obtaining of information on documents can be made in accordance with the provisions of Section 33 of the Act on the openness of government activities. The administrative court competent to process appeals lodged against parties other than a contracting authority acting as a public authority is the administrative court in the judicial district of which the contracting authority is established.
- (4) Appeals lodged against decisions by the Evangelic Lutheran Church shall fall within the scope of the Church Act.

Chapter 11 — Remedies

Section 76 — Sanctions issued by the Market Court

- (1) Where a breach of this Act or any regulations based thereon, of the European Community law or the World Trade Organisation Agreement on Government Procurement is committed in respect of the contract, the Market Court may upon petition:
- (1) wholly or in part cancel a decision by a contracting authority;
 - (2) forbid the contracting authority to apply a section in a document relating to the contract or otherwise to pursue an incorrect procedure;
 - (3) require the contracting authority to rectify an incorrect procedure; or
 - (4) order the contracting authority to pay compensation to a party who would have had a genuine chance of winning the contract if the procedure had been correct.
- (2) Provision for compensation may be made if the harm caused to the contracting authority, rights of third parties and the public interest by the measure defined in subsection 1, paragraphs 1—3 is considered to outweigh the benefits or if the petition has been initiated after the conclusion of the contract. With respect to setting the amount of compensation, account shall be taken of the nature of the

mistake or omission by the contracting authority, the aggregate value of the contract and the costs and damages incurred by the petitioner.

Section 77 — Referral to the Market Court

The petition referred to in Section 76, subsection 1 shall be submitted in writing. The petition shall be submitted no later than 14 days after the candidate or tenderer has received information in writing concerning the decision specified in Section 73, subsection 1, and the petition instructions. Concluding the contract shall not prevent the processing of the petition.

Section 78 — Parties

- (1) An interested party may refer matters concerning the contract to the Market Court.
- (2) The Ministry of Trade and Industry may refer matters to the Market Court concerning the Community procedure, in order to monitor compliance. In respect of matters specified in Section 13, the referral to the Market Court can be made by a state or municipal authority or other instance which has granted a project-specific subsidy to execute a works contract.

Section 79 — Interim prohibitions

- (1) After the petition referred to in Section 76, subsection 1 has been initiated, the Market Court may prohibit or suspend the implementation of the decision or otherwise issue instructions to suspend the contract as an interim measure for the period of the proceedings in the Market Court. The prohibition specified in paragraph 2 of the aforementioned Section and the obligation specified in paragraph 3 may also be issued as an interim measure for the period of the proceedings in the Market Court.
- (2) In its decision concerning the measure defined in subsection 1, the Market Court shall take into consideration that the harm caused by the measure to the opponent, rights of third parties and the public interest may not outweigh its benefits.
- (3) In urgent cases, the Chief Justice of the Market Court or the Justice of the Market Court may issue a ruling on the interim measure, as provided for in subsection 1.

Section 80 — Hearings and other procedures

- (1) The Market Court may not issue an interim prohibition or suspension in a procurement case or resolve the case without reserving the contracting authority and other parties the opportunity to be heard. However, a temporary measure necessitated by the case may be issued without reserving the right to be heard if the purpose of such a measure might otherwise be compromised.
- (2) The Market Court may require the party to attend a session and produce any clarifying documents relating to the pending case. If the party does not fulfil this obligation or without lawful excuse fails to attend a session at the Market Court, the party may be ordered to produce the documents or attend the court under the penalty of a fine.
- (3) The Administrative Judicial Procedure Act Matters shall otherwise apply to matters falling within the jurisdiction of the Market Court, with the exception of Section 74, subsection 3 of the Administrative Judicial Procedure Act.

Section 81 — Conditional fines

The Market Court may, in order to emphasise the importance of complying with the prohibition referred to in Section 76, subsection 1, paragraph 2, and the obligation referred to in paragraph 3, impose a conditional fine. The Market Court may also impose a conditional fine in respect of a temporary suspension of the contract during the proceedings of the Market Court pursuant to Section 79, subsection 1, and when issuing a prohibition defined in Section 76, subsection 1, paragraph 2, pursuant to Section 79, subsection 2, and in respect of the obligation specified in paragraph 3 as an interim measure during the proceedings of the

Market Court. The provisions of the Act on default fines (1113/1990) shall apply to the imposing of, and sentencing to, default fines.

Section 82 — Prohibition to appeal

A matter falling within the jurisdiction of the Market Court cannot be appealed against under the provisions of the Local Government Act (365/1995) or the Administrative Judicial Procedure Act on the grounds that the decision is in breach of this Act.

Section 83 — Appeals against the decisions by the Market Court

Appeals against the rulings issued by the Market Court can be lodged in the Supreme Administrative Court in accordance with the Administrative Judicial Procedure Act. Despite the appeal, the ruling issued by the Market Court shall be complied with unless otherwise instructed by the Supreme Administrative Court.

Section 84 — Compensation for damages

- (1) Those who, while acting in breach of this Act or any regulations based thereon, the European Community law or the World Trade Organisation Agreement on Government Procurement, cause damage to candidates, tenderers or suppliers shall be liable to pay compensation for the said damage.
- (2) However, where the claim for damage refers to costs incurred from the tendering procedure, the candidate or the tenderer is entitled to compensation if he can provide proof of the incorrect procedure as defined in subsection 1 and that had the procedure been correct, he would have possessed a genuine chance of winning the tender.
- (3) In respect of matters defined in subsections 1 and 2, the competent court shall be the court of first instance in accordance with Chapter 10 of the Code of Procedure.

Chapter 12 — **Further provisions**

Section 85 — Disclosure of information

- (1) Notwithstanding the provisions concerning confidentiality provided for in the Act on the openness of government activities or in any other Act, contracting authorities shall forward statistical and other information on the different stages of the contract and the performed contracts to the Finnish authorities and the European Union bodies on the scale required by Community law, for the purpose of monitoring contracts and exchanging information. Notwithstanding confidentiality regulations, The Ministry of Trade and Industry shall reserve the right to forward information it has received to the European Union authorities pursuant to this Act.
- (2) Where applicable, the provisions of the Church Act shall apply to the public availability of the documents of the Evangelic Lutheran Church and parishes thereof.
- (3) More specific rules shall be laid down in a Government decree on the statistical obligations referred to in subsection 1 and stipulated by Articles 75 and 76 of the Directive on public contracts, and on the obligation of the contracting authority referred to in Article 43 of the Directive on public contracts to draw up reports concerning tendering procedures and contract decisions and other information to be forwarded to the European Union bodies.

Section 86 — Specific rules

Where appropriate, provisions shall be laid down in a Government decree:

- (1) on the requirements for the use of a dynamic purchasing system and electronic auctions; and the requirements for the procedure thereof; and
- (2) to provide more specific rules on the setting up and principles of the state procurement system referred to in this Act.

Section 87 — Entry into force and transitional provisions

- (1) This Act will enter into force on 1 June 2007. Any measures necessary for the implementation of this Act can be undertaken before the entry into force of the Act.
- (2) This Act repeals the Public Procurement Act (1505/1992) of 23 December 1992, as amended, and the Decree on contracts, which do not fall within the scope of the Public Procurement Act (342/1994).
- (3) This Act shall apply to contracts where the tendering process is initiated after the entry into force of this Act. The tendering process is deemed to have been initiated at the moment of the publication of the contract notice. In respect of contracts which do not require the publication of a contract notice, the contract is deemed to have been initiated at the moment at which the invitation to tender or negotiations is sent or the negotiations are commenced with the suppliers.
- (4) This Act shall apply to contracts initiated by contracting units in the postal services sector until 31 December 2007.

The following annex II A is in the Finnish
legislation Annex A

The following annex II B is in the Finnish
legislation Annex B

The following annex I is in the Finnish
legislation Annex C

ANNEX II

SERVICES REFERRED TO IN ARTICLE 1(2)(d)

ANNEX II A ⁽¹⁾

Category No	Subject	CPC Reference No ⁽¹⁾	CPV Reference No
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000 to 50982000 (except for 50310000 to 50324200 and 50116510-9, 50190000-3, 50229000-6, 50243000-0)
2	Land transport services ⁽²⁾ , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60112000-6 to 60129300-1 (except 60121000 to 60121600, 60122200-1, 60122230-0), and from 64120000-3 to 64121200-2
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 62100000-3 to 62300000-5 (except 62121000-6, 62221000-7)
4	Transport of mail by land ⁽³⁾ and by air	71235, 7321	60122200-1, 60122230-0 62121000-6, 62221000-7
5	Telecommunications services	752	From 64200000-8 to 64228200-2, 72318000-7, and from 72530000-9 to 72532000-3
6	Financial services: (a) Insurance services (b) Banking and investment services ⁽⁴⁾	ex 81, 812, 814	From 66100000-1 to 66430000-3 and from 67110000-1 to 67262000-1 ⁽⁴⁾
7	Computer and related services	84	From 50300000-8 to 50324200-4, From 72100000-6 to 72591000-4 (except 72318000-7 and from 72530000-9 to 72532000-3)
8	Research and development services ⁽⁵⁾	85	From 73000000-2 to 73300000-5 (except 73200000-4, 73210000-7, 7322000-0)
9	Accounting, auditing and bookkeeping services	862	From 74121000-3 to 74121250-0
10	Market research and public opinion polling services	864	From 74130000-9 to 74133000-0, and 74423100-1, 74423110-4
11	Management consulting services ⁽⁶⁾ and related services	865, 866	From 73200000-4 to 73220000-0, From 74140000-2 to 74150000-5 (except 74142200-8), and 74420000-9, 74421000-6, 74423000-0, 74423200-2, 74423210-5, 74871000-5, 93620000-0

⁽¹⁾ In the event of any difference of interpretation between the CPV and the CPC, the CPC nomenclature will apply.

Category No	Subject	CPC Reference No ⁽¹⁾	CPV Reference No
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	From 74200000-1 to 74276400-8, and from 74310000-5 to 74323100-0, and 74874000-6
13	Advertising services	871	From 74400000-3 to 74422000-3 (except 74420000-9 and 74421000-6)
14	Building-cleaning services and property management services	874, 82201 to 82206	From 70300000-4 to 70340000-6, and from 74710000-9 to 74760000-4
15	Publishing and printing services on a fee or contract basis	88442	From 78000000-7 to 78400000-1
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90100000-8 to 90320000-6, and 50190000-3, 50229000-6, 50243000-0

⁽¹⁾ CPC Nomenclature (provisional version), used to define the scope of Directive 92/50/EEC.

⁽²⁾ Except for rail transport services covered by category 18.

⁽³⁾ Except for rail transport services covered by category 18.

⁽⁴⁾ Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.

Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive.

⁽⁵⁾ Except research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting authority.

⁽⁶⁾ Except arbitration and conciliation services.

ANNEX II B

Category No	Subject	CPC Reference No	CPV Reference No
17	Hotel and restaurant services	64	From 55000000-0 to 55524000-9, and from 93400000-2 to 93411000-2
18	Rail transport services	711	60111000-9, and from 60121000-2 to 60121600-8
19	Water transport services	72	From 61000000-5 to 61530000-9, and from 63370000-3 to 63372000-7
20	Supporting and auxiliary transport services	74	62400000-6, 62440000-8, 62441000-5, 62450000-1, From 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7), and 74322000-2, 93610000-7
21	Legal services	861	From 74110000-3 to 74114000-1
22	Personnel placement and supply services ⁽¹⁾	872	From 74500000-4 to 74540000-6 (except 74511000-4), and from 95000000-2 to 95140000-5
23	Investigation and security services, except armoured car services	873 (except 87304)	From 74600000-5 to 74620000-1
24	Education and vocational education services	92	From 80100000-5 to 80430000-7
25	Health and social services	93	74511000-4, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services	96	From 74875000-3 to 74875200-5, and from 92000000-1 to 92622000-7 (except 92230000-2)
27	Other services ⁽²⁾		

⁽¹⁾ Except employment contracts.

⁽²⁾ Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.

ANNEX I

LIST OF THE ACTIVITIES REFERRED TO IN ARTICLE 1(2), POINT (b) ⁽¹⁾

NACE ⁽¹⁾					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures — clearing of building sites — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: — overburden removal and other development and preparation of mineral properties and sites This class also includes: — building site drainage — drainage of agricultural or forestry land	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes This class excludes: — drilling of production oil or gas wells, see 11.20 — water well drilling, see 45.25 — shaft sinking, see 45.25 — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

⁽¹⁾ In the event of any difference of interpretation between the CPV and the NACE, the NACE nomenclature will apply.

NACE (1)					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> construction of all types of buildings construction of civil engineering constructions: <ul style="list-style-type: none"> bridges, including those for elevated highways, viaducts, tunnels and subways long-distance pipelines, communication and power lines urban pipelines, urban communication and power lines; ancillary urban works assembly and erection of prefabricated constructions on the site <p>This class excludes:</p> <ul style="list-style-type: none"> service activities incidental to oil and gas extraction, see 11.20 erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28 construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23 building installation, see 45.3 building completion, see 45.4 architectural and engineering activities, see 74.20 project management for construction, see 74.20 	45210000
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> erection of roofs roof covering waterproofing 	45220000
		45.23	Construction of highways, roads, airfields and sports facilities	<p>This class includes:</p> <ul style="list-style-type: none"> construction of highways, streets, roads, other vehicular and pedestrian ways construction of railways construction of airfield runways construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations painting of markings on road surfaces and car parks <p>This class excludes:</p> <ul style="list-style-type: none"> preliminary earth moving, see 45.11 	45230000

NACE (1)					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
		45.24	Construction of water projects	This class includes: construction of: waterways, harbour and river works, pleasure ports (marinas), locks, etc. dams and dykes dredging subsurface work	45240000
		45.25	Other construction work involving special trades	This class includes: construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment: construction of foundations, including pile driving water well drilling and construction, shaft sinking erection of non-self-manufactured steel elements steel bending bricklaying and stone setting scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms erection of chimneys and industrial ovens This class excludes: renting of scaffolds without erection and dismantling, see 71.32	45250000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: electrical wiring and fittings telecommunications systems electrical heating systems residential antennas and aerials fire alarms burglar alarm systems lifts and escalators lightning conductors, etc.	45310000

NACE (1)					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
		45.32	Insulation work activities	<p>This class includes:</p> <p>installation in buildings or other construction projects of thermal, sound or vibration insulation</p> <p>This class excludes:</p> <p>waterproofing, see 45.22</p>	45320000
		45.33	Plumbing	<p>This class includes:</p> <p>installation in buildings or other construction projects of:</p> <p>plumbing and sanitary equipment</p> <p>gas fittings</p> <p>heating, ventilation, refrigeration or air-conditioning equipment and ducts</p> <p>sprinkler systems</p> <p>This class excludes:</p> <p>installation of electrical heating systems, see 45.31</p>	45330000
		45.34	Other building installation	<p>This class includes:</p> <p>installation of illumination and signalling systems for roads, railways, airports and harbours</p> <p>installation in buildings or other construction projects of fittings and fixtures n.e.c.</p>	45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes:</p> <p>application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials</p>	45410000
		45.42	Joinery installation	<p>This class includes:</p> <p>installation of non self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials</p> <p>interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</p> <p>This class excludes:</p> <p>laying of parquet and other wood floor coverings, see 45.43</p>	45420000

NACE ⁽¹⁾					
CPV code			SECTION F		CONSTRUCTION
Division	Group	Class	Subject	Notes	
		45.43	Floor and wall covering	This class includes: laying, tiling, hanging or fitting in buildings or other construction projects of: ceramic, concrete or cut stone wall or floor tiles parquet and other wood floor coverings carpets and linoleum floor coverings, including of rubber or plastic terrazzo, marble, granite or slate floor or wall coverings wallpaper	45430000
		45.44	Painting and glazing	This class includes: interior and exterior painting of buildings painting of civil engineering structures installation of glass, mirrors, etc This class excludes: installation of windows, see 45.42	45440000
		45.45	Other building completion	This class includes: installation of private swimming pools steam cleaning, sand blasting and similar activities for building exteriors other building completion and finishing work n.e.c. This class excludes: interior cleaning of buildings and other structures, see 74.70	45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	This class excludes: renting of construction or demolition machinery and equipment without operators, see 71.32	

⁽¹⁾ Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1). Regulation as amended by Commission Regulation (EEC) No 761/93 of 24 March 1993 (OJ L 83, 3.4.1993, p. 1).