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The Public Procurement Act

Title I

General provisions

Part 1

Purpose and general principles, etc.

Purpose

Section 1. The purpose of this Act shall be to establish the practices for public procurement and thus enable optimum use of public funds via effective competition.

General principles

Section 2. In public procurement procedures, a contracting authority shall observe the principles of equal treatment, transparency and proportionality pursuant to Title II-IV.

(2) A public procurement procedure may not be designed for the purpose of exclusion from the scope of the present Act or limit competition in an artificial manner.

Non-discrimination on the basis of nationality

Section 3. A contracting authority may not treat Danish economic operators or services less favourably than foreign economic operators and services.

(2) A contracting authority may not treat economic operators or services from member states of the European Union or the European Economic Area less favourably than Danish economic operators and services.

(3) Subsection 2 shall also apply to economic operators and services from other countries than those stated in subsection 2 to the extent this is a result of duties incumbent on Denmark or the European Union.

Conflicts of interest

Section 4. A contracting authority shall take appropriate measures to identify, prevent and remedy conflicts of interest in connection with a procurement procedure.

Confidentiality, access to documents and communication

Section 5. Unless otherwise stipulated by this Act or legislation in general, a contracting authority may not provide confidential information forwarded by a candidate or tenderer in connection with a procurement procedure.

(2) Unless otherwise stated by legislation in general, a contracting authority may impose confidentiality on candidates or tenderers in respect of information made available to them by the contracting authority in connection with a procurement procedure.

(3) Communication on essential elements may not be in oral form. Communication on non-essential elements may be in oral form if the contracting authority provides sufficient documentation of such communication.

Part 2

Scope

Section 6. Title II shall apply to the conclusion of public contracts at an estimated value corresponding to minimum the amount stated below, cf. however section 9:

- 1) DKK 38,624,809 net of VAT for public works contracts.
- 2) DKK 998,019 net of VAT for public supply and service contracts awarded by central government contracting authorities and design contests held by such contracting authorities.
- 3) DKK 1,541,715 net of VAT for public supply and service contracts awarded by sub-central contracting authorities and design contests held by such contracting authorities.

(2) When public supply and services contracts are entered into by contracting authorities operating in the field of defence, (1)(2) shall apply to contracts for supplies covered by Annex III of Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65). Subsection (1)(3) shall apply when such contracts involve supplies not covered by Annex III of Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(3) Further, Title II shall apply to the formation of the following contracts which are not public contracts:

- 1) Contracts which are subsidised directly by the contracting authority by more than 50 percent and the value of the contract equals minimum DKK 38,624,809 net of VAT, cf. however section 9, and the contract involves
 - a) works as stated in Annex II of Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65) or
 - b) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes.
- 2) Service contracts which are subsidised directly by the contracting authority with more than 50 percent and the value of the contract equals minimum DKK 1,541,715 net of VAT, cf. however section 9, and the contract is related to a works contract covered by 1).

(4) A contracting authority providing subsidies covered by (3) shall ensure that the provisions of the present Act are observed in cases when the contracting authority is not awarding the contract for which subsidies are granted itself, or when the contracting authority is awarding the contract itself for and on behalf of other entities.

Section 7. Title III shall apply to the formation of public contracts involving social and other specific services stated in Annex XIV of Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65) when the value of the contact equals minimum DKK 5,583,000 net of VAT.

Section 8. When works, supply of services or purchase of similar supplies are awarded in the form of separate lots, Title II or III shall apply to the awarding of each lot where the aggregate value of all lots equals or exceeds the threshold which applies.

(2) Notwithstanding the provisions of (1), a contracting authority may award a lot without adhering to the rules of Title II or III when the estimated value net of VAT of the lot in question is lower than DKK 595,832 net of VAT for supplies or services or lower than DKK 7,447,900 net of VAT for works. However, cf. section 9. However, the aggregate value of lots awarded without applying Title II or III

may not exceed 20 percent of the aggregate value of all lots into which the proposed work, the proposed purchase of similar supplies or the proposed supply of services is divided.

Section 9. The thresholds stated in sections 6-8 shall be revised by the European Commission every two years. Contracting authorities subject to the present Act shall apply the thresholds in force from time to time.

Section 10. Title IV shall apply to the formation of public supply and services contracts not subject to Title II or III where the contract or the design contest has a certain cross-border interest.

Section 11. Title V shall apply to the formation of public supply and services contracts not subject to title II-IV with an estimated value of minimum DKK 500,000 net of VAT.

Exclusions

Public contracts between entities within the public sector

Section 12. The present Act shall not apply to contracts awarded by a contracting authority to a legal person where

- 1) the contracting authority controls the legal person in a way which is similar to the control exercised by the contracting authority over its own organisational units,
- 2) over 80 percent of the activities of the legal person are carried out in connection with the performance of contracts entrusted to the legal person by the contracting authority or other legal persons under the control of the contracting authority, cf. section 16, and
- 3) there are no direct private capital shares in the legal person except statutory private capital shares which do not include decisive influence on the legal person.

Section 13. The Act shall not apply where a contracting authority awards a public contract to the legal person controlling the contracting authority pursuant to section 12 or to another legal person controlled by the same legal person.

Section 14. A contracting authority which does not control a legal person pursuant to section 12 may award a public contract to that legal person without applying this Act where

- 1) the contracting authority exercises control over that legal person in conjunction with other contracting authorities corresponding to the control exercised by that contracting party of their organisational units,
- 2) over 80 percent of the activities of the legal person are carried out in connection with the performance of contracts entrusted to the legal person by the controlling contracting authorities or other legal persons under the control of the contracting authorities, cf. section 16, and
- 3) there are no direct private capital shares in the controlling legal person except statutory private capital shares which do not include decisive influence on the legal person.

(2) The condition stated in (1)(1) shall be considered to fulfilled where

- 1) the decision-making bodies of the legal person are composed of representatives of all participating contracting agencies,
- 2) the contracting authorities can exercise joint decisive influence on strategic targets and substantial decisions of the legal person, and
- 3) the legal person does not represent interests contrary to the interests of the controlling contracting authority.

Section 15. This Act shall not apply to public contracts formed between contracting authorities where

- 1) the contract establishes or implements cooperation between the contracting authorities for the purpose of ensuring that the public services to be carried out by the contracting authorities are supplied with a view to accomplishing joint targets

- 2) the implementation of that cooperation is governed solely by considerations relating to the public interest, and
- 3) the contracting authorities together carry out less than 20 percent of the activities affected by the cooperation in the open market, cf. section 16.

Section 16. In statements of the percentage of the activities stated in section 12 item 2, section 14(2), section 14(1)(2) and section 15 item 3, the contracting authority shall consider the average aggregate turnover or a suitable alternative activity-based target such as costs incurred by the legal person or contracting authority in question in relation to services and works for a period of 3 years prior to the award of the contract.

(2) If turnover or alternative activity-based targets are not available, or if such turnover or activity-based targets are no longer relevant, documentation of measurement of the activity shall suffice.

Contracts awarded on the basis of an exclusive right

Section 17. This Act shall not apply to public service contracts awarded by the contracting authority to another contracting authority or to a group of contracting authorities on the basis of an exclusive right under law or according to published administrative provisions which are compatible with the Treaty on the Functioning of the European Union.

Contracts, etc. relating to utilities

Section 18. Title II and III shall not apply to contracts and design contests covered by Directive 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (the Official Journal of the European Union 2014, No. L 94, page 243) (the Utilities Directive), or which are excepted from the Utilities Directive under sections 18, 23 and 34 of the Directive.

(2) Titles II and III shall not apply to contracts awarded by a contracting authority delivering postal services covered by section 13(2)(b) of the Utilities Directive and shall be awarded with a view to

- 1) supplementary services which increase value and which are related to and are implemented solely by means of electronic aids,
- 2) financial services included in the CPV codes 66100000-1 to 66720000-3 and Article 21(d) of the Utilities Directive,
- 3) philatelic services or
- 4) logistics services.

Contracts, etc. relating to electronic communication

Section 19. Titles II and III shall not apply to public contracts and design contests with the main purpose of enabling the contracting authority to provide a public communication network, operate such a network or supply electronic communication services to the public.

Contracts, etc. organised pursuant to international rules

Section 20. This Act shall not apply to public contracts and design contests if the contracting authority has a duty to apply other procurement procedures than those stipulated by this Act owing to

- 1) an international duty relating to supply of works, supplies or services intended for joint implementation or exploitation of a project,
- 2) participation in an international organisation, or
- 3) an international agreement concerning posting of troops if the agreement is related to undertakings in an EU member state or a third country.

(2) This Act shall not apply to public contracts and design contests implemented in accordance with public procurement rules stipulated by an international organisation or an international financing institution where such public contracts and design contests are fully funded by that organisation or institution.

(3) If contracts and design contests are co-funded primarily by an international organisation or an international financing institution, the contracting authority and the relevant international organisation or financing institution shall agree on the procurement rules to be applied.

Specific exclusions for service contracts

Section 21. Titles II and III shall not apply to public service contracts for:

- 1) Acquisition or rental of land, existing buildings or other immovable property or rights thereon.
- 2) Purchase, development, production or co-production of programme material intended for audio-visual media services or media services in the field of radio broadcasting which is awarded by providers of audio-visual media services or media services in the field of radio broadcasting, or contracts for broadcasting time or programme choice awarded to providers of audio-visual media services or media services in the field of radio broadcasting.
- 3) Arbitration and conciliation services.
- 4) The following legal services:
 - a) Legal representation by a lawyer in connection with arbitration and conciliation carried out in an EU member state or at an international arbitration or conciliation authority or legal proceedings at tribunals, courts or public authorities in an EU member state or a third country or at international tribunals, courts or institutions.
 - b) Legal counselling by a lawyer in preparation of legal proceedings included in paragraph a or when it is highly likely that the issue subject of counselling will become subject of such legal proceedings.
 - c) Certification and authentication of documents shall be performed by notaries.
 - d) Legal services provided by administrators of property or appointed guardians or and other legal services performed by persons appointed by a tribunal or by law for the execution of specific tasks in connection with the supervision of such tribunals.
 - e) Other legal services related to the execution of public authority, even if only occasionally.
- 5) Financial services in connection with issue, sale, purchase or transfer of securities or other financial instruments as stipulated in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/ EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (the Official Journal of the European Union 2004, No. L 145, page 1), central bank services and operations carried out using the European Financial Stability Facility and the European stabilisation mechanism.
- 6) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments.
- 7) Employment contracts.
- 8) Civil protection offices, emergency management agencies and services for the prevention of danger provided by non-profit organisations or associations included in the CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3, except ambulance services for patient transportation.
- 9) Public passenger transport or metro.

- 10) Political campaign services included in the CPV codes 79341400-0, 92111230-3 and 92111240-6 where awarded by a political party in connection with an election campaign.

Services related to research and development

Section 22. This Act shall only apply to public service contracts for research and development included in the CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the service provided is wholly remunerated by the contracting authority.

Defence and security

Section 23. This Act shall not apply to

- 1) contracts and design contests covered by Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (the Official Journal of the European Union 2009, No. L 216, page 76) (the Defence and Security Directive),
- 2) contracts and design contests not covered by the Defence and Security Directive pursuant to Articles 8, 12 and 13 of the Defence and Security Directive,
- 3) contracts and design contests not excluded under 1) or 2) where protection of essential national security interests cannot be protected by means of less radical measures, or
- 4) contracts or design contests where the procurement procedure or the completion hereof has been declared confidential or must be accompanied by special security measures when it has been determined by law or by the contracting authority that the relevant essential security interests cannot be protected by means of less radical measures.

Part 3

Definitions

Section 24. Definitions:

- 1) Ancillary procurement activities: Activities including support for procurement activities such as
 - a) counselling on technical infrastructure which enables the contracting authority to award public contracts or form framework agreements for works, supplies or services,
 - b) counselling on the performance or presentation of open procurement procedures and
 - c) preparation and administration of procurement procedures for and on behalf of a contracting authority.
- 2) Readily available solution: A solution which is already available in the market and does not require adaptation in order to fulfil the need of a contracting authority.
- 3) Variants: A tender including alternative solutions to the procurement needs of the contracting authority at the invitation of the contracting authority which differs from the stipulations of the contract documents.
- 4) Candidate: An economic operator which has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation or a competitive dialogue, an innovation partnership or a negotiated procedure without prior publication.
- 5) Works: The outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function.
- 6) Centralised procurement activities: Activities carried out on a continuing basis in relation to
 - a) procurement of supplies or services intended for other contracting authorities or
 - b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;

- 7) CPV code: A code included in the Common Procurement Vocabulary, cf. Regulation No. 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (the Official Journal of the European Community 2002, No. L 340, page 1) and in any delegated acts adopted by the European Commission in accordance with Article 87 of the Directive under Article 23(2) of the Directive.
- 8) Electronic auction: A repetitive electronic process used for classification of tenders on the basis of automatic valuation methods.
- 9) Electronic catalogue: A format for presentation and systematisation of information using a joint method for all participating tenderers which is suitable for electronic processing, including tenders presented in spreadsheets.
- 10) Electronic means: Electronic equipment for processing and storage of data sent and received via cable, by radio, by optical means or by other electromagnetic means.
- 11) The Defence and Security Directive: Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (the Official Journal of the European Union 2009, No. L 216, page 76).
- 12) The Utilities Directive: Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (the Official Journal of the European Union 2014, No. L 94, p. 243).
- 13) European Single Procurement Document: A document consisting of an own statement drawn up on the basis of a standard form stipulated by the European Commission which serves as preliminary documentation for the purpose of assessing whether grounds for exclusion exist, and if the relevant minimum requirements for suitability are fulfilled.
- 14) Sub-central contracting authorities: Contracting authorities not included in the definition central government contracting authorities. Sub-central contracting authorities are e.g. regions, municipalities and bodies governed by public law.
- 15) Central purchasing body: A contracting authority engaged in central purchasing activities.
- 16) Procurement service provider: A public or private body offering ancillary purchasing activities in the market.
- 17) Innovation: Introduction of new or significantly improved supplies, services or processes including production or works activities, a new marketing method or a new organisational method in the fields of business practice, workplace organisation or external relations.
- 18) Conflicts of interest: Situations when a person at the contracting authority or a procurement service provider who acts on behalf of the contracting authority, and who is involved in the implementation of the procurement procedure, or who may influence the result of the procedure, has a direct or indirect financial, economic or other personal interest which presumably could jeopardise the impartiality and independence of that person in connection with the procurement procedure. Conflicts of interest may also arise in situations when an economic operator has conflicting interests which may affect the performance of the contract in a negative direction.
- 19) Directive on the award of concession contracts: Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (the Official Journal of the European Union 2014, No. L 94, page 1).
- 20) Life cycle: all consecutive or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of a product or a work or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation.
- 21) Label: Any document or certificate or any attestation confirming that works or supplies, services, processes or procedures comply with the stipulated label requirements.

- 22) Label requirements: The requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned.
- 23) Public works contracts: Public contracts for
 - a) performance or design and performance of activities stated in Annex II of Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65),
 - b) the execution, or both the design and execution, of a work, cf. No. 5, or
 - c) performance of works, cf. No. 5, which fulfil requirements specified by the contracting authority which has a decisive influence on the nature or design of the work.
- 24) Public contracts: Contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services.
- 25) Public service contracts: Public contracts having as their object the provision of services other than works.
- 26) Public supply contracts: Public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products.
- 27) Bodies governed by public law: Bodies
 - a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,
 - b) having legal personality, and
 - c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those authorities or bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.
- 28) Contracting authority: State, regional or local authorities, bodies governed by public law and associations of one or more of those authorities or of one or more of such bodies governed by public law.
- 29) Design contest: A procedure which enables a contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.
- 30) Framework agreement: An agreement formed between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and the quantities envisaged.
- 31) Coordinated tender: Tender for which the contracting authority has stipulated in the procurement documents that several tenders may or should be submitted for the performance of the proposed work which include different performance methods, materials, etc.
- 32) Written: 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.
- 33) Central government authorities: Contracting authorities included in the central government administration.
- 34) Tenderer: An economic operator which has submitted a tender.
- 35) The Directive: Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).
- 36) Procurement documents: Documents prepared or referred to by the contracting authority for the purpose of describing or defining elements of a procedure for the award of a public contract, including
 - a) the contract notice,
 - b) the technical specifications,
 - c) the descriptive document,

- d) proposed contract terms,
 - e) formats for documents presented by candidates and tenderers,
 - f) information on general obligations in force
 - g) any additional documents.
- 37) **Material changes:** An alteration which may have influenced the participation of potential candidates or tenderers in the procurement procedure referred to or distorted competition between candidates or tenderers if the alteration had been stated in the original contract award procedure.
- 38) **Economic operator:** Any natural or legal person or public entity or group of such persons and entities, including temporary association of undertakings which offer the execution of a work or works or the supply of products or services on the market.

Part 4

Mixed contracts

Mixed contracts solely for types of procurement subject to this Act

Section 25. A contracting authority shall award contracts for a combination of works, services or supplies in accordance with the rules applying to the type of service which constitutes the main purpose of the contract. However, cf. (2).

(2) A contracting authority shall award a contract in accordance with the rules applying to the type of service which represents the greatest value where the contract includes both services covered by Title III and other services. This provision also applies to contracts for both services and supplies.

Mixed contracts subject to this Act and not subject to this Act

Section 26. Where a contract includes services subject to this Act as well as services not subject to this Act, and the contract is not subject so sections 27 or 28, a contracting authority may award separate contracts for separate elements of the procurement if objective separation of the procurement is possible.

(2) Where a contracting authority awards separate contracts pursuant to section 1, the individual contracts shall be awarded according to the rules applying to separate contracts. The assessment regarding which rules apply shall be based on the characteristics of the separate element.

(3) Where the contracting authority awards a total contract, this Act shall apply to the total contract where the estimated value of the element of the contract subject to the Act exceeds the thresholds in force irrespective of the value of the elements which are not subject to the Act.

(4) Where objective separation of the various elements of a contract is not possible, the contract shall be awarded under the rules applying to the type of service which constitutes the principal subject-matter of the contract.

Mixed contracts subject to the Utilities Directive

Section 27. Where a contract includes services subject to this Act as well as services related to activities subject to the Utilities Directive, the assessment regarding which rules apply to the award of the contract shall be made in accordance with article 5 and 6 of the Utilities Directive.

Mixed contracts concerning defence and security aspects

Section 28. Where a contract includes services subject to this Act and subject to Article 346 of the Treaty on the Functioning of the European Union or Defence and Security Directive, the contracting authority may award separate contracts for the separate elements of the purchase if objective separation of the purchase is possible.

(2) Where the contracting authority awards separate contracts pursuant to section 1, the individual contracts shall be awarded according to the rules applying to separate contracts. The assessment regarding which rules apply shall be based on the characteristics of the separate element.

(3) Where the contracting authority decides to award a total contract, the following provisions shall apply:

- 1) Where elements of the contract are subject to Article 346 of Treaty on the Functioning of the European Union, the contract may be awarded outside the scope of the present Act when award of a total contract can be justified on objective grounds.
- 2) Where elements of the contract are subject to the Defence and Security Directive, the contract may be awarded in accordance with the Defence and Security Directive when award of a total contract can be justified on objective grounds.

(4) Where a contract is subject to both (3)(1) and (3)(2), (3)(1) shall apply.

(5) Where objective separation of the various elements of the purchase is not possible, the contracting authority may award the total contract outside the scope of this Act when the contract includes elements subject to Article 346 of the Treaty on the Functioning of the European Union; in other cases, it may be awarded under the Defence and Security Directive.

Part 5

Calculation of contract value

Section 29. The value of a contract shall be the estimated value at the moment at which the contract notice is sent. Where a contract notice is not sent, the value shall be calculated as at the moment at which the contracting authority commences the contract awarding procedure.

Section 30. A contracting authority shall estimate the value of a contract based on the total amount to be paid to the supplier as estimated by the contracting authority for the performance of the contract for which tenders are invited. The contracting authority shall include any form of option and any renewals of the contract and any prizes or payments to candidates or tenderers stipulated in the procurement documents. The value shall be calculated net of VAT.

(2) A contract may only be separated with the effect of excluding the procurement procedure from the scope of this Act if such separation can be based on objective grounds. The method for calculation of the estimated value of the contract

may not be established with the aim of excluding the procurement procedure from the scope of this Act.

Section 31. If a contracting authority consists of decentralised units, the estimated total value for all decentralised units shall be considered.

(2) However, where a decentralised unit has sole responsibility of the contract referred to, the value may be estimated for that unit alone.

(3) A decentralised unit shall be responsible for a contract pursuant to (2) when the unit

- 1) is itself in charge of the performance of the procurement procedure,
- 2) controls a separate budget for the procurement procedure referred to, and
- 3) does not use a framework agreement concluded by the contracting authority.

Section 32. The value of a framework agreement or a dynamic purchasing system shall be the highest estimated value of all contracts expected to be awarded within the term of the framework contract or the dynamic purchasing system.

Section 33. The value of an innovation partnership shall be the highest estimated value of the research and development activities envisaged for all stages of the partnership referred to and of all supplies, services or works expected to be developed or purchased on termination of the partnership.

Section 34. The value of a works contract shall be the highest estimated value of the works and the highest total estimated value of the supplies and services required for the performance of the works which are made available to the contractor by the contracting authority.

Section 35. For 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

- 1) the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, if possible, 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.

Section 36. For supply contracts for leasing or rental with or without an option to buy supplies the calculation of the contract value shall be based on

- 1) the estimated value of the contract for contracts of limited duration with a term of 12 months or less,
- 2) the total value of the contract for contracts with a term of more than 12 months including the estimated residual value, or
- 3) the estimated monthly value multiplied by 48 for contracts without a fixed term or contracts for which the term cannot be defined.

Section 37. For service contracts on insurance, banking and other financial services and design, the calculation of the estimated value of the contract shall be based on:

- 1) Insurance services: the premium payable and other forms of remuneration.
- 2) Banking and other financial services: fees, commissions, interest and other forms of remuneration.
- 3) Design contracts: fees, commissions and other forms of remuneration.

Section 38. For public service contracts which do not indicate a total price, the calculation

- 1) shall be based on the total value of their full term for fixed-term contracts when the term is 48 months or less, or
- 2) the monthly value multiplied by 48 for contracts without a fixed term or contracts with a term exceeding 48 months.

Title II

Public procurement above the threshold

Part 6

Preparation of procurement procedures

Preliminary market consultations, etc.

Section 39. Before launching a procurement procedure, a contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements. In that connection, the contracting authority may enter into dialogues with and receive guidance from economic operators. Such guidance may be applied in the planning and conduct of the procurement procedure provided that this does not result in a violation of the principles of section 2.

(2) If an economic operator or an enterprise affiliated with an economic operator has provided guidance to a contracting authority in relation to a market consultation or otherwise provided guidance to or been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of the economic operator referred to in the procurement procedure. As a minimum, the contracting authority shall

- 1) ensure to the greatest possible extent that relevant information exchanged in connection with the involvement of an economic operator in the procurement procedure is included in the contract documents, and

2) set the time limits for receipt of requests to participate and receipt of tenders to equalise the advantage in terms of time which an economic operator may have gained by its involvement in the preparation of the procurement procedure, including via dialogue with and guidance received from economic operators.

(3) A contracting authority shall exclude the candidate or tenderer referred to in accordance with section 136(2) if the contracting authority cannot guarantee that the principle of equal treatment is observed by less radical measures.

Technical specifications

Section 40. A contracting authority shall state the technical specifications according to the definitions in item 1 in Annex VII of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65) in the procurement documents.

(2) A contracting authority shall stipulate the characteristics required by the works, services or supplies in the technical specifications. The contracting authority may impose requirements for the specific process or method of production or supply of the proposed works, supplies or services and requirements concerning intellectual property rights including transfer of intellectual property rights.

(3) For all purchases intended for use by natural persons, the technical specifications shall be stipulated in view of disabled access or design for all users, save in exceptional cases duly justified. For access requirements which compulsory pursuant to EU rules, the disabled access requirements or design for all users shall be established via reference to the relevant EU rules.

(4) The technical specifications shall afford equal access for economic operators to the procurement procedure and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

Section 41. A contracting authority shall prepare the technical specifications in the procurement documents, cf. section 40, in one of the following ways unless Danish technical rules have been determined which are compatible with EU law and which the contracting authority is obligated to apply:

- 1) By description of a function requirement or requirements for functionality, technical requirement or other requirements, provided that the description is sufficiently precise to enable candidates or tenderers to identify the subject-matter of the contract.
- 2) By reference to one or more of the following standards, etc. in order of priority where each reference shall be followed by the expression "or similar"
 - a) National standards for implementation of European standards.
 - b) European Technical Assessments
 - c) Common technical assessments
 - d) International standards
 - e) Other technical references prepared by European standardisation bodies
 - f) National standards
 - g) National technical approvals
 - h) National technical specifications for design, calculation and performance of the work and use of the supplies
- 3) As a combination of description pursuant to item 1 and reference pursuant to item 2.

(2) Subsection 1, item 2, paragraphs f-h, may only be applied when no standards, etc. exist as stated in subsection 1, item 2, paragraphs a-e.

Section 42. In the technical specifications, a contracting authority may not

- 1) Indicate a specific brand, origin or manufacturing process characterising the products or services supplied by a specific economic operator in the technical specifications, cf. section 40, or
- 2) refer to a specific brand or patent or a specific type, origin or manufacture with the effect of favouring or eliminating certain economic operators or supplies.

(2) However, in duly justified cases, a contracting authority may use references as stated in (1) where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to section 41(1) is not possible. Such a reference shall be followed by the expression "or similar".

Section 43. When the contracting authority prepares technical specifications in accordance with section 41(1)(2), the contracting authority cannot refuse a tender on the grounds that the works, supplies or services tendered are not in accordance with the standard or specification stated if it has been proven by the tenderer by appropriate means, including the documentation stated in section 47, that the solutions offered comply with the requirements stipulated by the standard or specification referred to in a similar manner.

Section 44. When the contracting authority prepares technical specifications in accordance with section 41(1)(1), the contracting authority may not refuse a tender which complies with one of the specifications stated in item 1-5 where such specifications fulfil the function requirements or requirements for functionality which the contracting authority has stipulated in

- 1) a national standard for implementation of a European standard,
- 2) a European technical approval,
- 3) a common technical specification,
- 4) an international standard or
- 5) a technical reference prepared by a European standardisation body.

(2) A tenderer shall prove by means of relevant documentation that the works, supplies or services that comply with the standard fulfil the function requirements of requirements for functionality stipulated pursuant to section 41(1)(1).

Section 45. A contracting authority may refer to product categories in the procurement documents when the reference clearly indicates to the potential tenderers the specific products in the included product categories which may subsequently become included in the contract or the framework agreement.

(2) In relation to the performance of a procurement procedure with reference by the contracting authority to specific product categories, a contracting authority may perform the evaluation of the tender, cf. section 160, based on a typical example of comparable products in the product ranges offered by the tenderers.

Labels

Section 46. In the technical specifications, the award criteria or the terms of performance of the contract, a contracting authority may require that a purchase shall carry a particular label as documentation of specific qualities when

- 1) the label requirements are solely related to requirements to the subject-matter of the contract and are suitable for defining the qualities of the works, supplies or services which are the subject-matter of the contract,
- 2) the label requirements are based on objectively verifiable and non-discriminatory criteria,
- 3) the labels have been established in an open and transparent procedure in which all relevant stakeholders may participate,
- 4) the labels are available for all potential tenderers, and
- 5) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

(2) When a contracting authority cannot require fulfilment of all label requirements, the contracting authority shall refer to the relevant label requirements in the procurement documents.

(3) A contracting authority which requires a specific label shall be obliged to accept all labels which fulfil similar label requirements.

(4) A contracting authority shall always accept other relevant documentation where

- 1) a tenderer cannot obtain the required label or a similar label within the time limit stipulated for reasons which are not attributable to the that tenderer, or

- 2) a tenderer does not have the required label even if it was obtainable within the time limit stipulated, and the contracting authority is satisfied that the label requirements are fulfilled, and the resources spent by the contracting authority are found in a specific assessment not to exceed the resources which the contract authority would have been required to spend in order to verify that the tenderer were in possession of the required label to an inexpedient degree.

Test reports, certification and other means of proof

Section 47. A contracting authority may require a tenderer to present a test report or a certificate issued by a compliance assessment body as means of proof of fulfilment of the requirements stated in the technical specifications, cf. section 40, award criteria, cf. section 162, or the conditions of performance of the contract, cf. section 176.

(2) Where a contracting authority requires presentation of test reports or certificated issued by a specific compliance assessment body, test reports and certificates issued by a similar compliance assessment body shall also be accepted by the contracting authority.

Section 48. A contracting authority shall always accept other relevant means of proof where

- 1) a tenderer does not have access to the issue of the required test reports or certificates, cf. section 47(1) and is unable to obtain the required test reports or certificates, cf. section 47(1) within the time limit stipulated for reasons which are not attributable to the that tenderer, or
- 2) a tenderer does not have the test reports or certificates even if they were obtainable within the time limit stipulated, and the contracting authority is satisfied that the requirements in the technical specifications, the award criteria or the conditions of performance of the contract are fulfilled, and the resources spent by the contracting authority are found in a specific assessment not to exceed the resources which the contract authority would have been required to spend in order to verify that the tenderer were in possession of the required test reports or certificates to an inexpedient degree.

Division of contracts into lots

Section 49. A contracting authority may decide to divide a contract into lots.

(2) Where a contracting authority does not divide a contract into lots, the contracting authority shall state the grounds hereof in the procurement documents.

(3) A contracting authority shall state the following in the contract notice:

- 1) whether the tenderer may submit a tender for one, several or all lots,
- 2) whether the tenderer can be awarded one, several or all lots and, if that is the case, how the lots or lot groups can be combined, and
- 3) the objective and non-discriminatory criteria or rules which determine the award of lots, including the award method for lots in cases when the criteria or rules would otherwise have the effect that a tenderer is awarded more lots than the maximum number which can be awarded to the tenderer.

Variants

Section 50. A contracting authority may accept or require variants from a tenderer. Variants shall be related to the subject-matter of the contract. The award criteria chosen shall be usable in connection with both ordinary tenders and variants.

(2) If a contracting authority accepts variants, this shall be stated in the contract notice.

Section 51. If a contracting authority accepts or requires variants, the following shall be stated in the procurement documents:

- 1) The minimum requirements to be fulfilled by variants.
- 2) The specific requirements for submission of variants, in particular if variants can only be submitted in conjunction with an ordinary tender.

(2) The contracting authority may only consider variants if the variant fulfils the minimum requirements stipulated in accordance with (1)(1).

(3) The contracting authority shall ensure that the award criteria can be applied in relation to variants fulfilling the minimum requirements, cf. (1)(1), and in relation to ordinary tenders fulfilling the minimum requirements.

Section 52. Where a contracting authority accepts variants, the contracting authority may not refuse a variant on the grounds that the contract will be a service contract and not a supply contract or on the grounds that the contract will be a supply contract and not a service contract.

Coordinated tenders

Section 53. A contracting authority may accept or require coordinated tenders. However, cf. (2). If that is the case, this should appear from either the contract notice or the procurement documents.

(2) A contracting authority shall stipulate the required number of coordinated tenders in view of the principle of proportionality, including the needs of the contracting authority and the costs incurred by the tenderers in connection with the preparation of tenders. The contracting authority may require up to eight coordinated tenders without stating grounds. Where the contracting authority wishes to require more than eight coordinated tenders, the contracting authority shall state the grounds hereof in the procurement documents.

(3) Evaluation of tenders shall be performed in accordance with section 160.

Reserved contracts for sheltered workshops, etc.

Section 54. A contracting authority may require that only sheltered workshops or economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons can participate in the procurement procedure. However, cf. (2).

(2) Subsection 1 shall only apply where minimum 30 percent of all employees of the economic operator are disabled or disadvantaged persons.

(3) Reference shall be made to this provision in the contract notice where the procurement procedure is reserved for economic operators subject to (1).

Part 7

Procurement procedures and design

contests

Procurement procedures

Section 55. Procurement procedures shall be performed according to one of the following procedures:

- 1) open procedure, cf. sections 56 and 57,
- 2) restricted procedure, cf. sections 58-60,
- 3) competitive procedure with negotiation, cf. sections 61-66,
- 4) competitive dialogue, cf. sections 67-72,
- 5) innovation partnerships, cf. sections 73-79,
- 6) negotiated procedure without prior publication, cf. 80-83, or
- 7) design contest, cf. sections 84-92.

Open procedure

Section 56. In open procedures all economic operators may submit tenders in response to the contract notice. The contract notice shall include the information stated in Annex V, Part C of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65). The contracting authority shall use the standard form, cf. section 128(3).

Section 57. A contracting authority shall fix an appropriate time limit for receipt of tenders, cf. section 93.

(2) The time limit shall be minimum 35 days from the day following the date the contract notice is sent.

(3) However, in cases where the contracting authority has used a prior information notice, the minimum time limit shall be 15 days when

- 1) the prior information notice includes all information in Annex V, Part B, Section I of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65) to the extent such information was available at the time of publication of the prior information notice, and
- 2) the prior information notice has been sent for publication minimum 35 days and maximum 12 months before the contract notice was sent.

(4) If the contracting authority accepts submission of tenders via electronic means in accordance with rules issued by the Minister for Business and Growth pursuant to section 194(1), the time limit stated in (2) may be reduced by 5 days.

(5) Where, owing to urgent need of the contracting authority, the time limit stipulated in (2) cannot be observed, the contracting authority may set at time limit which shall be not less than 15 days from the day following the date the contract notice is sent.

(6) The contracting authority shall publish the other procurement documents at the date of publication of the contract notice, cf. section 132.

Restricted procedure

Section 58. In restricted procedures, all economic operators may request participation in response to a contract notice. The contract notice shall include the information stated in Annex V, Part C of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65). The contracting authority shall use the standard form, cf. section 128(3).

Section 59. A contracting authority shall fix an appropriate time limit for receipt of request to participate, cf. section 93.

(2) The time limit shall be minimum 30 days from the day following the date the contract notice is sent.

(3) If, owing to urgent need of the contracting authority, the time limit stipulated in (2) cannot be observed, the contracting authority may set at time limit for receipt of requests for participation minimum 15 days from the day following the date the contract notice is sent.

(4) Only candidates invited by the contracting authority may submit tenders. A contracting authority shall select minimum five candidates which will be invited to submit tenders in accordance with section 145. Where the number of candidates is lower than five, the contracting authority may invite one or more candidates which fulfil the fixed minimum requirements for suitability, cf. section 140, to submit tenders.

(5) A contracting authority shall invite the relevant candidates simultaneously and in writing to submit tenders.

(6) The contracting authority shall publish the other procurement documents at the date of publication of the contract notice, cf. section 132.

Section 60. A contracting authority shall fix an appropriate time limit for receipt of tenders, cf. section 93.

(2) The time limit shall be minimum 30 days from the day following the date the invitation to submit tenders is sent.

(3) However, in cases where the contracting authority has used a prior information notice, the minimum time limit shall be 10 days when

- 1) the prior information notice includes all information in Annex V, Part B, Section I of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014,

No. L 94, page 65) to the extent such information was available at the time of publication of the prior information notice, and

2) the prior information notice has been sent for publication minimum 35 days and maximum 12 months before the contract notice was sent.

(4) If the contracting authority accepts submission of tenders via electronic means in accordance with rules issued by the Minister for Business and Growth pursuant to section 194(1), the time limit stated in (2) may be reduced by 5 days.

(5) In duly justified cases, sub-central contracting authorities may determine a time limit for receipt of tenders of less than 30 days, but minimum 10 days from the day following the date the invitation to submit tenders was sent.

(6) If, owing to urgent need of the contracting authority, the time limit stipulated in (2) cannot be observed, the contracting authority may set at time limit for receipt of tenders of minimum 10 days from the day following the date the invitation to submit tenders is sent.

Competitive procedure with negotiation

Section 61. A contracting authority may apply competitive procedures with negotiation in the following cases:

- 1) For works, supply or service contracts which fulfil one or more of the following criteria:
 - a) The needs of the contracting authority cannot be met without adaptation of solutions already available,
 - b) the contract includes design or innovative solutions,
 - c) owing to special circumstances as regards the nature, complexity or legal or financial situation or risks related hereto, the contract cannot be awarded without advance negotiation, or
 - d) the contracting authority cannot define the technical specifications with sufficient precision by reference to a standard, a European Technical Assessment, a common technical specification or a technical reference, cf. item 2-5 of Annex VII to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

2) Where only irregular or unacceptable tenders are submitted in connection with an open or a restricted procedure, cf. (2) and (3).

(2) Irregular tenders under (1)(2) shall be defined in particular as tenders where

- 1) the tender does not fulfil the requirements stated in the procurement documents,
- 2) the tender was received after the time limit,
- 3) documentation exists of illegal coordination or corruption, or
- 4) the contracting authority has found that the tender is unusually low.

(3) Unacceptable tenders under (1)(2) shall be defined in particular as tenders

- 1) submitted by tenderers which do not fulfil the stipulated minimum requirements for suitability, or
- 2) which exceed the budget determined in advance by the contracting authority.

(4) Where a contracting authority makes use of the option in (1)(2), the contracting authority shall not be obligated to publish a contract notice when all tenderers included in previous open or restricted procedure have submitted tenders in accordance with the formal requirements of the procurement procedure, and if they all comply with the requirements stipulated in section 159(2)(2)(1-3).

Section 62. In competitive procedure with negotiation, all economic operators may request participation in response to a contract notice. The contract notice shall include the information stated in Annex V, Part C of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(2) In addition to the information stated in Annex V, Part C of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65), the contract notice

shall also include the following information:

- 1) whether the contracting authority reserves the right to award a contract based on the initial tender,
- 2) the anticipated progress of the negotiation procedure, including whether the negotiations will take place in successive stages in order to reduce the numbers of tenders to be negotiated, and
- 3) whether the contracting authority will pay remuneration to the negotiation participants.

(3) The contracting authority shall state the subject-matter of the procedure, the minimum requirements and the award criteria in the procurement documents.

Section 63. A contracting authority shall fix an appropriate time limit for receipt of requests for participation, cf. section 93.

(2) The time limit shall be minimum 30 days from the day following the date the contract notice is sent. However, the option stated in section 59(3) shall also apply to competitive procedure with negotiation.

(3) The contracting authority shall publish the other procurement documents at the date of publication of the contract notice, cf. section 132.

Section 64. Only candidates invited by the contracting authority may submit an initial tender as basis of subsequent negotiation. A contracting authority shall select minimum three candidates which will be invited to submit tenders in accordance with section 145. Where the contracting authority receives less than three requests for participation, the contracting authority may invite one or more candidates which fulfil the fixed minimum requirements for suitability, cf. section 140, to submit initial tenders. If the contracting authority wishes to select more than five candidates, grounds hereof shall be provided.

(2) A contracting authority shall invite the relevant candidates simultaneously and in writing to submit initial tenders.

Section 65. A contracting authority shall fix an appropriate time limit for receipt of the initial tender, cf. section 93.

(2) The time limit shall be minimum 30 days from the day following the date the invitation to submit tenders is sent. However, the options stated in section 60(3) shall also apply to competitive procedure with negotiation.

Section 66. A contracting authority shall negotiate the initial tenders and all subsequent tenders with the tenderers unless the contracting authority has reserved the right to award the contract based on the initial tender.

(2) The initial tender shall form the basis of the subsequent negotiation. Final tenders and essential elements, including minimum requirements and award criteria shall not be negotiated.

(3) Negotiations may be carried out in a number of successive stages in order to limit the number of tenders which require negotiation. Limitation shall be based on the award criteria stipulated in the contract notice or the other procurement documents.

(4) A contracting authority shall document the negotiation procedure and ensure that all tenders in the procedure are submitted in writing.

(5) Where, as a result of the negotiations, amendments are made to the procurement documents, all tenderers which have not been rejected in accordance with (3) shall be informed of such amendments. The contracting authority may not introduce material changes to the original procurement documents.

(6) A contracting authority shall fix an appropriate time limit for submission of the final tender, cf. section 93.

(7) A contracting authority shall award the contract based on one of the award criteria stipulated in section 162.

Competitive dialogue

Section 67. A contracting authority may apply competitive dialogue in the following cases:

- 1) For works, supplies or services contracts which fulfil one or more of the following criteria:
 - a) The needs of the contracting authority cannot be met without adaptation of solutions already available,

- b) the contract includes design or innovative solutions,
 - c) owing to special circumstances as regards the nature, complexity or legal or financial situation or risks related hereto, the contract cannot be awarded without advance negotiation, or
 - d) the contracting authority cannot define the technical specifications with sufficient precision by reference to a standard, a European Technical Assessment, a common technical specification or a technical reference, cf. item 2-5 of Annex VII to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).
- 2) Where only irregular or unacceptable tenders are submitted in connection with an open or a restricted procedure.

(2) Irregular tenders shall be defined as e.g. tenders where

- 1) the tender does not fulfil the requirements stated in the procurement documents,
- 2) the tender was received after the time limit,
- 3) documentation exists of illegal coordination or corruption, or
- 4) the contracting authority has found that the tender is unusually low.

(3) Unacceptable tenders shall be defined as e.g. tenders submitted by tenderers which do not fulfil the minimum requirements for suitability or which exceed the budget determined in advance by the contracting authority.

(4) Where a contracting authority makes use of the option in (1)(2), the contracting authority shall not be obligated to publish a contract notice when all tenderers included in previous open or restricted procedure have submitted tenders in accordance with the formal requirements of the procurement procedure, and if they all comply with the requirements stipulated in section 159(2)(2)(1-3).

Section 68. In competitive dialogues, all economic operators may request participation in response to a contract notice. The contract notice shall include the information stated in Annex V, Part C of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(2) In addition to the information stated in Annex V, Part C of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65), the contract notice shall also include the following information:

- 1) the anticipated dialogue procedure, including whether successive stages will be applied in order to limit the number of solutions which require discussion during the dialogue procedure, cf. section 70(3), and
- 2) whether the contracting authority will pay remuneration to the participants during the dialogue procedure.

(3) The contracting authority shall stipulate its needs and requirements and the award criterion in the contract notice. Further, the details hereof, including minimum requirements and additional award criteria, shall appear from either the contract notice or a descriptive document.

(4) A contracting authority shall fix an appropriate time limit for receipt of requests to participate, cf. section 93.

(5) The time limit shall be minimum 30 days from the day following the date the contract notice is sent.

(6) The contracting authority shall publish the other procurement documents at the date of publication of the contract notice, cf. section 132.

Section 69. Only candidates which receive an invitation may participate in the dialogue procedure. A contracting authority shall select minimum three candidates which will be invited to participate in the dialogue in accordance with section 145. Where the contracting authority receives less than three requests for participation, the contracting authority may invite one or more candidates which fulfil the fixed minimum requirements for suitability, cf. section 140, to participate in the dialogue. If the contracting authority wishes to select more than five candidates, grounds hereof shall be provided.

(2) A contracting authority shall invite the relevant candidates simultaneously and in writing to participate in the dialogue.

Section 70. A contracting authority shall initiate dialogue with the relevant candidates in order to determine how the needs of the contracting authority can best be met.

(2) The dialogue may relate to all aspects of the procurement procedure. However, they may not result in material changes including minimum requirements and award criteria.

(3) Dialogue may be carried out in a number of successive stages in order to limit the number of solutions which require discussion during the dialogue procedure. Limitation shall occur based on the award criteria stipulated in the contract notice and the descriptive document.

(4) A contracting authority may continue the dialogue until the contracting authority has identified the solution(s) best suited to fulfil the needs of the contracting authority.

(5) Where amendments are made to the procurement documents as a result of the dialogue procedure, all other participants shall be informed of such amendments. The contracting authority may not introduce material changes to the original procurement documents.

(6) A contracting authority shall document the dialogue procedure.

Section 71. A contracting authority shall invite the participants to submit their final tenders based on the solution(s) determined during the dialogue process after declaring the dialogue closed and informing the other participants hereof. The final tender shall include all aspects necessary for the performance of the project.

(2) A contracting authority shall fix an appropriate time limit for submission of the final tender, cf. section 93.

(3) These final tenders may be clarified, specified and optimised at the request of the contracting authority. However, this may not involve changes to essential aspects of the procurement procedure or the tender or distort competition or otherwise have a discriminatory effect.

Section 72. A contracting authority shall award the contract based on the award criterion best price-quality ratio, cf. section 162(1)(3).

(2) On request from the contracting authority, negotiations may be carried out with the tenderer which submitted the winning tender. Negotiation shall take place with a view to confirming the financial duties or other terms of the tender.

(3) Negotiations pursuant to (2) may not result in material changes, including minimum requirements and award criteria.

Innovation partnership

Section 73. A contracting authority may apply innovation partnerships where the contracting authority plans to develop innovative products, services or works which are not already available in the market. An innovation partnership includes three stages: a procurement procedure, an innovation process and the possible purchase of the service developed.

Section 74. In procurement procedures for innovation partnerships, all economic operators may request participation in response to the contract notice. The contract notice shall include the information stated in Annex V, Part C of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(2) The procurement documents shall include the following information:

- 1) whether the contracting authority reserves the right to award a contract based on the initial tender,
- 2) the arrangement which will apply to intellectual property rights,
- 3) whether the contracting authority will enter into one or more partnership contracts,
- 4) the anticipated progress of the negotiation procedure, including whether the negotiations will take place in successive stages in order to limit the number of tenders which require negotiation,
- 5) whether the contracting authority will pay remuneration to the participants, and

6) whether the contracting authority will limit the number of participants based on sub-targets, cf. section 78.

(3) The contracting authority shall state the subject-matter of the procedure, the minimum requirements and the award criteria in the procurement documents.

(4) A contracting authority shall fix an appropriate time limit for receipt of candidacies, cf. section 93.

(5) The time limit shall be minimum 30 days from the day following the date the contract notice is sent.

(6) The contracting authority shall publish the other procurement documents at the date of publication of the contract notice, cf. section 132.

Section 75. A contracting authority shall select minimum three candidates to submit tenders. Where the number of candidates is lower than three, the contracting authority may select one or more candidates which fulfil the fixed requirements for suitability, cf. section 140, to submit tenders.

(2) According to section 145, as a minimum, a contracting authority shall emphasise the capacity of the candidates in the fields of research and development and performance of innovative solutions in the selection process.

(3) A contracting authority shall invite the selected candidates simultaneously and in writing to submit initial tenders in the form of a research and innovation project proposal. Only candidates invited by the contracting authority may submit initial tenders.

Section 76. A contracting authority shall fix an appropriate time limit for receipt of initial tenders, cf. section 93.

(2) The time limit shall be minimum 30 days from the day following the date the invitation to submit tenders was sent. The option stated in section 60(5) shall also apply to innovation partnerships.

(3) If the contracting authority accepts submission of tenders via electronic means in accordance with rules issued by the Minister for Business and Growth pursuant to section 194(1), the time limit stated in (2) may be reduced by 5 days.

Section 77. A contracting authority shall negotiate initial and all subsequent tenders with the tenderers unless the contracting authority decides to apply a condition under section 74(2)(1) and award the contract based on the initial tender.

(2) The initial tender shall form the basis of the subsequent negotiation. All aspects except final tenders and essential elements, including minimum requirements and award criteria, may be negotiated.

(3) In connection with the negotiations, a contracting authority shall stipulate the terms of the partnership contract, including performance levels and maximum costs.

(4) Negotiations may be carried out in a number of successive stages with a view to limiting the number of tenders which require negotiation. Limitation shall occur based on the award criteria stipulated in the contract notice or the other procurement documents.

(5) A contracting authority shall document the negotiation procedure and ensure that all tenders in the procedure are submitted in writing.

(6) Where, as a result of the negotiations, changes are made to the procurement documents, all tenderers which have not been rejected in accordance with section 74(2)(4) shall be informed of such amendments. The contracting authority may not introduce material changes to the original procurement documents.

(7) A contracting authority shall fix an appropriate time limit for submission of the final tender, cf. section 93.

(8) A contracting authority shall award the partnership contract based on the award criterion best price-quality ratio, cf. section 162(1)(3).

Section 78. A contracting authority shall divide the individual innovation partnership into stages and related sub-targets.

(2) After each sub-target, a contracting authority may decide to terminate all or individual partnership contracts, cf. (1).

(3) A contracting authority shall pay the participating partners remuneration in suitable instalments.

Section 79. A contracting authority shall ensure to the greatest possible extent that the degree of innovation of the planned solution and the order of the research and innovation activities required to develop an innovative solution are taken into account in the structure and term of the partnership and the value of the various stages.

(2) The estimated value of the planned purchase of supplies, services or works shall be in proportion to the investment required for such supplies, services or works.

Negotiated procedure without prior publication

Section 80. A contracting authority may apply negotiated procedure without prior publication when, in connection with open or restricted procedures for works, supplies or services,

- 1) no requests for participation or tenders have been received, or
- 2) only requests for participation or tenders which are irrelevant in relation to the contract have been received.

(2) It is a condition under (1), that no material changes shall be made of the original procurement documents and that a report shall be submitted to the European Commission on its request hereof.

(3) A contracting authority may also apply negotiated procedure without prior publication when the works, supplies or services can only be supplied by one particular economic operator

- 1) because the procurement procedure is performed for the purpose of creating or acquiring a unique work of art or a unique artistic performance,
- 2) because of lack of competition for technical reasons, or
- 3) owing to the protection of exclusive rights, including intellectual property rights.

(4) Subsection 3, item 2 and 3, shall only apply when no reasonable alternative or replacement exists and the lack of competition is not a result of an artificial restriction of the procurement terms.

(5) A contracting authority may also apply negotiated procedure without prior publication when strictly necessary owing to circumstances resulting from events unforeseeable to the contracting authority as a result of which time limits for open procedures, restricted procedures or competitive procedures with negotiation cannot be observed.

Section 81. A contracting authority may also apply Negotiated procedure without prior publication for supplies contracts and services contracts as regards item 4

- 1) when the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs,
- 2) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance,
- 3) for supplies quoted and purchased on a commodity market, and
- 4) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations.

(2) As a general rule, the term of contracts under (1)(2) shall not exceed 3 years.

Section 82. Further, a contracting authority may apply Negotiated procedure without prior publication to services contracts when the contract forms part of a design contest and is awarded to the winner or winners of that design contest, cf. sections 84-92. In the latter case, all winners shall be invited to participate in the negotiations.

Section 83. Further, a contracting authority may apply negotiated procedure without prior publication for new works or services consisting in the repetition of similar works or services entrusted to the

economic operator to whom the same contracting authorities awarded an original contract, subject to the following conditions:

- 1) The works or services were in accordance with a basic project.
- 2) The original contract thereon was awarded in a procedure under section 55.
- 3) The procurement documents for the original procedure of the basic project stated in item 1 stipulated the scope of any additional works or services and the condition of the award of such works or services.
- 4) The option to apply this procedure were stated in the original procurement documents. The contracting authority shall consider the estimated total value of the new works or services when section 6 is applied.
- 5) Maximum 3 years have passed since the formation of the original contract.

Design contests

Section 84. This provision and sections 85-92 apply to

- 1) design contests organised with a view to awarding a service contract, and
- 2) design contests with prizes or payments to participants.

(2) In the cases referred to in (1)(1), the value of the contract shall be based on the estimated value net of VAT of the service contract referred to, including any prizes or payments to participants for their participation.

(3) In the cases referred to in (1)(2), the value of the contract shall be based on the total prize and payment sum, including the estimated value net of VAT of the service contract which might subsequently be concluded under section 82 if the contracting authority has stated the intention of the contracting authority to award such a contract in the contract notice.

Design contest notice

Section 85. A contracting authority may carry out a design contest via publication of a notice.

(2) Where the contracting authority plans to award a service contract under section 82, the contracting authority shall state this in the design contest notice.

Section 86. When the contracting authority has organised a design contest, the contracting authority shall submit a notice of the results of the design contest to the Publications Office of the European Union in accordance with section 129(6), and the contracting authority shall be able to prove the date of dispatch.

(2) A contracting authority may omit publication of the results of the contest when publication would prevent law enforcement or otherwise be contrary to public interest or detrimental to the legitimate economic interests of certain public or private enterprises or to the fair competition between service providers.

Section 87. A contracting authority shall publish notices under sections 85 and 86 in accordance with section 129(6). The notices shall include the information stated in Annex V, Part E and F, respectively, of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

Selection of candidates

Section 88. Design contests shall be carried out in accordance with the provisions of sections 84-92.

(2) In connection with design contests with a limited number of candidates, a contracting authority shall stipulate clear and non-discriminatory criteria of suitability which shall form the basis of selection. The number of candidates invited to participate in the design contest shall be sufficient to ensure genuine competition.

The jury

Section 89. The contracting authority shall appoint a jury to find a winner of the design contest. The jury shall be composed exclusively of natural persons who are independent of participants in the contest.

(2) Where the contracting authority requires a particular professional qualification from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

Section 90. The jury shall be autonomous in its decisions and opinions.

(2) Candidates shall be anonymous, and the jury shall examine the plans and projects submitted by the candidates solely on the basis of the criteria indicated in the design contest notice.

(3) Anonymity must be observed until the jury has reached its opinion or decision.

Section 91. The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification based on the qualities of each project.

(2) Candidates may be invited, if need be, to answer questions which the jury has recorded in the report to clarify any aspects of the projects.

Section 92. A contracting authority shall draw up a complete report of the dialogue between the jury members and the candidates.

Fixing of time limits and opening of tenders

Section 93. A contracting authority shall fix suitable time limits for the submission of requests to participate and for receipt of tenders. As a minimum the time limit for receipt of tenders and requests to participate shall be in accordance with the minimum time limit of the relevant procurement procedure.

(2) Where tenders can be made only after a visit to the site or after inspection of the documents at the premises of the contracting authority, the contracting authority shall set a time limit for the receipt of tenders which enables all tenderers to be aware of all the information needed to produce tenders. The time limit shall be extended compared to the minimum time limit stated in the relevant procurement procedure.

(3) In open procedures, the contracting authority shall fix the time limit for the receipt of tenders in the contract notice. In restricted procedures, competitive procedures with negotiation, competitive dialogues and innovation partnerships, the contracting authority shall fix the time limit for the receipt of requests to participate in the contract notice, and the time limit for the receipt of tenders shall be stated in the procurement documents.

(4) A contracting authority may extend the time limit for the receipt of requests to participate or the receipt of tenders. The contracting authority shall extend the time limit for the receipt of requests to participate or the receipt of tenders in the following cases:

- 1) If the contracting authority supplies additional information about the procurement documents or supporting documents later than 6 days before the time limit of the receipt of requests to participate or the receipt of tenders.
- 2) If the contracting authority makes substantial amendments to the procurement documents.
- 3) If the contracting authority does not forward the documents to which free, direct and full access has not been granted, cf. section 132(2) within 5 days after a request hereof has been received.
- 4) If the contracting authority has reduced the time limit as a result of an urgent need of the contracting authority, cf. sections 57(5), 59(3) and 65(2), cf. section 60(6), and the contracting authority supplies additional information later than 4 days before the time limit of the receipt of requests to participate or the receipt of tenders.

Section 94. A contracting authority may not examine the content of a request to participate or a tender until the time limit of requests or tenders has expired.

Part 8

Procurement methods

Framework agreements

Section 95. A framework agreement shall be concluded in accordance with the procedures stipulated in this Act, cf. section 55.

(2) The maximum term of a framework agreement shall be 4 years. In extraordinary circumstances, a framework agreement may be concluded for a term longer than 4 years.

(3) Conclusion of contracts based on a framework agreement shall take place during the term of the framework agreement. Such contract may apply for a period of time after the expiry of the framework agreement.

Section 96. The contract notice shall state the contracting authorities entitled to use the framework agreement. Contracts based on a framework agreement may be concluded by the parties to the framework agreement.

Section 97. Contracts based on a framework agreement with a winning tenderer shall be awarded based on the terms of the framework agreement. The contracting authority may request the winning tenderer to complete its tender before the contract is awarded.

Section 98. Contracts based on a framework agreement with more than one party to the framework agreement may be awarded by

- 1) direct award, cf. section 99, or
- 2) reopening the competition, cf. section 100.

(2) The contracting authority may apply direct award and reopening of the competition on the same framework agreement. The choice between direct award and reopening of the competition shall be based on objective criteria, including the quantity, value or characteristics of the sought supplies or services and other specific procurement needs of the contracting authority. The objective criteria shall be determined in the procurement documents related to the framework agreement.

(3) The method of award of contracts shall be stated in the procurement documents, cf. (1).

Section 99. Direct award of contracts, cf. section 98(1)(1) shall be based on the provision of the framework agreement and the objective criteria stipulated in the procurement documents for the framework agreement.

Section 100. Reopening of the competition, cf. section 98(1)(2) and (2) shall be based on

- 1) the same terms as those which applied in connection with the award of the framework agreement,
- 2) if necessary, terms with a more specific wording
- 3) any other terms stipulated in advance in the procurement documents for the framework agreement.

(2) Reopening of the contest shall occur by simultaneous written invitations to submit written tenders for the economic operators which are able to perform the contract. The invitation shall state the time limit of submission of tenders and other necessary information.

(3) A contracting authority shall award the contract based on the award criteria stipulated in the procurement documents for the framework agreement, cf. section 162.

Dynamic purchasing systems

Section 101. A contracting authority may apply a dynamic purchasing system for the purchase of supplies, works and services which are generally available in the market and meet the requirements of the contracting authority.

(2) A dynamic purchasing system shall follow the rules of the restricted procedure, cf. section 104(3).

Section 102. The contracting authority shall state the following in the contract notice:

- 1) the term of the dynamic purchasing system,
- 2) the minimum requirements for suitability which apply to the admittance to the dynamic purchasing

system, cf. section 140, and the award criteria which apply to the award of contracts based on the dynamic purchasing system, cf. 105(3).

(2) The contracting authority may divide a dynamic purchasing system into objectively characterised categories of supplies, services or works.

(3) When a dynamic purchasing system is divided into categories, cf. (2), the contracting authority shall specify the minimum requirements of suitability in the contract notice, cf. (1)(2).

Section 103. As a minimum, a contracting authority shall indicate the nature and estimated quantity of the planned purchase in the procurement documents and state all necessary information about the dynamic purchasing system, including the operating method of the dynamic purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

Section 104. In the establishment of a dynamic purchasing system, the minimum time limit for the receipt of requests to participate by the contracting authority shall be 30 days from the day following the date the contract notice is sent.

(2) A contracting authority may not apply a dynamic purchasing system until the time limit stated in (1) has expired, and the processing of requests to participate which were received within the time limit have been concluded, at the earliest.

(3) A dynamic purchasing system shall always be open to candidates which fulfil the minimum requirements for suitability, and the number of candidates admitted to the purchasing system may not be limited.

(4) Processing of a request to participate which is received within the time limit stated in (1) shall be concluded no later than 10 workdays after receipt of the request. However, cf. (5) and (6).

(5) The time limit stated in (4) may be extended to 15 workdays in specific cases where the contracting authority considers this to be justifiable, including if the contracting authority needs to verify if the minimum criteria of suitability are fulfilled.

(6) Further, the time limit stated in (4) may be extended when the invitation to submit tenders for the first specific procurement procedures under a dynamic purchasing system has not been sent. The contracting authority may not send out invitations to submit tenders during the extended evaluation period.

Section 105. In connection with specific purchases, a contracting authority shall invite all participating candidates to submit tenders. The contracting authority may specify the award criteria in the invitation to submit tenders when this is relevant.

(2) When the dynamic purchasing system is divided into categories, the contracting authority shall invite all participating candidates admitted to the relevant category to submit tenders.

(3) A contracting authority shall award the contract to the tenderer which has submitted the best tender based on the fixed award criteria.

(4) The time limit for receipt of tenders, cf. section 93, shall be minimum 10 days from the day following the date the invitation to submit tenders is sent.

Section 106. A contracting authority may require that participants in a dynamic purchasing system submit a new and updated European Single Procurement Document no later than 5 days after receipt of a request to submit such a document, cf. section 148(1). The contracting authority may at any time during the term of the dynamic purchasing system require that the participants present documentation, cf. section 152, of the fact that the participants are not affected by grounds for exclusion, cf. sections 135-137, and that the participants fulfil the minimum requirements for suitability, cf. sections 140-143.

(2) When it can be established based on the European Single Procurement Document that the participant no longer fulfils the minimum criteria of suitability, the contracting authority shall exclude the participant from participating in the dynamic purchasing system.

Section 107. A contracting authority shall publish a notice in the Official Journal of the European Union when the term of the dynamic purchasing system is amended, or the dynamic purchasing system is terminated.

Section 108. All notices related to a dynamic purchasing system shall be issued electronically according to the rules stipulated by the Minister for Business and Growth in accordance with section 194(1).

(2) No payment duties may be imposed on candidates and participants for their participation in a dynamic purchasing system.

Electronic auctions

Section 109. A contracting authority may apply electronic auctions in connection with open procedures, restricted procedures, competitive procedures with negotiation, reopening of competition among the parties to a framework agreement in accordance with section 100 and the award of a contract in a dynamic purchasing system.

(2) Electronic auctions may not be applied in connection with the conclusion of service contracts and works contracts which include intellectual work which cannot be classified based on automatic evaluation methods.

Section 110. Electronic auctions may be used in relation to price competition and other quantifiable aspects.

(2) Electronic auctions may be performed in several stages. Electronic auctions shall be performed by means of an electronic system.

Section 111. A contracting authority planning to apply electronic auctions shall include this information in the contract notice. Further, the procurement documents shall include the following information:

- 1) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages,
- 2) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract,
- 3) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them,
- 4) the relevant information concerning the electronic auction process,
- 5) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding, and
- 6) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

Section 112. Before an electronic auction is held, the contracting authority shall assess the tenders received based on the fixed award criteria, cf. section 162, and the stipulated weighting of these in accordance with the chosen evaluation method, cf. section 160.

Section 113. A contracting authority shall send the invitation to participate in an electronic auction simultaneously and electronically to all tenderers which have submitted acceptable tenders. The auction can be held no sooner than 2 workdays after the invitation has been sent.

(2) The invitation to participate, cf. (1), shall include

- 1) the evaluation result, cf. section 112,
- 2) the date and time of commencement of the electronic auction,
- 3) information on any division into stages of the auction, cf. 110(2) and the time schedule of such stages,
- 4) the mathematical formula determining the automatic reclassification,
- 5) statement of the information which will be presented during the auction, cf. section 114, and
- 6) information about the conclusion of the auction, cf. section 115.

Section 114. During the electronic auction, the contracting authority shall instantaneously provide sufficient information to all tenderers to enable them to know their ranking at any given time. The contracting authority may provide other information about other prices or values stated if this is specified in the procurement documents. Further, the number of participants in the specific auction stage may be notified at any time.

(2) No information on the identity of the tenderers may be provided during the auction.

Section 115. An electronic auction is concluded

- 1) at the time stated in the invitation to participate,
- 2) when no further prices or values are received which meet the requirements for minimum fluctuation stated in the invitation to participate, or
- 3) when all stages of the auction have been completed.

Electronic catalogues

Section 116. In connection with procurement procedures which require the use of electronic means of communication, cf. the rules stipulated by the Minister for Business and Growth under section 194(1), a contracting authority may accept or require that tenders are submitted in the form of an electronic catalogue, or that tenders must include an electronic catalogue. Tenders submitted in the form of an electronic catalogue may be accompanied by other documents which complete the tender.

(2) A contracting authority may decide that tenders for a contract based on a dynamic purchasing system must be submitted in the form of an electronic catalogue or must include an electronic catalogue. Tenders submitted in the form of an electronic catalogue may be accompanied by other documents which complete the tender.

(3) A contracting authority may require the use of updated electronic catalogues, cf. section 118 in connection with

- 1) reopening of competition in connection with specific contracts pursuant to a framework agreement concluded with one or more tenderers by means of electronic catalogues, and
- 2) award of contracts based on a dynamic purchasing system where the request to participate in the purchasing system was accompanied by an electronic catalogue.

(4) The use of electronic catalogues shall appear from the contract notice.

Section 117. Candidates and tenderers shall prepare electronic catalogues in accordance with

- 1) the technical arrangements and specifications and other formal requirements fixed by the contracting authority,
- 2) the requirements for electronic communication tools and any other requirements fixed by the Minister for Business and Growth under section 194(1), and
- 3) any delegated acts of the European Commission which were adopted in accordance with Article 87 of the Directive.

(2) The requirements of the contracting authority under (1)(1 and 2) shall be stated in the procurement documents.

Section 118. Updating of electronic catalogues, cf. section 116(3) shall be carried out by

- 1) a new submission by the tenderers of their electronic catalogues in a form adapted to the requirements of the contract referred to, or
- 2) collection by the contracting authority of the information from the electronic catalogues already submitted which are necessary in order to compose a tender which fulfils the requirements of the contract referred to.

(2) When updating of the electronic catalogues is required under (1)(2), the contracting authority shall give notice hereof to the tenderers. This notice shall include information on the date and time of the planned collection of information and on the option to refuse such collection of information.

(3) The procurement documents for the framework agreement or the contract notice on the dynamic purchasing system shall state whether the competition will be reopened under (1)(1 or 2).

(4) Before a contract is awarded based on reopening of competition under (1)(2), the contracting authority shall ask the tenderer to confirm that the content of the tender submitted is not incorrect. If the tenderer referred to indicates incorrect content in the information collected, the contracting authority shall correct such information before a decision on the award of the contract is made.

Part 9

Joint procurement

Centralised procurement activities and central purchasing bodies

Section 119. A contracting authority may acquire supplies and services purchased for the use of the contracting authority via a central purchasing body.

(2) Further, a contracting authority may acquire works, supplies and services by means of

- 1) contracts awarded by a central purchasing body,
- 2) dynamic purchasing systems operated by a central purchasing body, and
- 3) framework agreements made by a central purchasing body.

Section 120. Where a dynamic purchasing system operated by a central purchasing body can be used by other contracting authorities, cf. section 119(2)(2), this option shall be stated in the contract notice.

(2) All procurement procedures handled by a central purchasing body shall be performed using electronic means of communication in accordance with rules stipulated by the Minister for Business and Growth pursuant to section 194(1).

Section 121. A contracting authority is deemed to fulfil its obligations under this Act where the contracting authority acquires

- 1) supplies or services under section 119(1) or
- 2) works, supplies or services under section 119(2).

(2) Irrespective of (1), a contracting authority shall be responsible for the parts of the purchasing process carried out by the contracting authority itself, including

- 1) award of a contract based on a dynamic purchasing system operated by a central purchasing body, cf. 119(2)(2),
- 2) reopening of competition under a framework agreement, cf. section 100, which was concluded by a central purchasing body, and
- 3) the decision as to which of the suppliers participating in a framework agreement with several suppliers shall perform a given task, cf. section 98.

Section 122. A purchasing authority may award a service contract on the supply of centralised purchasing activities to a central purchasing body without following the procurement procedures stipulated in this Act. Such services contracts may include incidental purchasing activities.

Joint procurement procedures

Section 123. Contracting authorities may agree to organise joint procurement procedures.

(2) If a full procurement procedure is completed for and on behalf of all participating contracting authorities, the participating contracting authorities shall be jointly responsible for fulfilling the obligations stipulated in Act.

(3) Where one or more contracting authorities have been selected among the participating contracting authorities to carry out the procurement procedure and act in its own name and on behalf of the other participating contracting authorities, the participating contracting authorities shall be jointly responsible for fulfilling the obligations stipulated in this Act.

(4) If a full procurement procedure is not completed jointly under (2), the participating contracting authorities shall only be jointly liable for the fulfilment of the obligations under this Act for the elements which were carried out jointly. Each contracting authority shall be fully responsible for fulfilling their obligations under this Act for the elements carried out by the contracting authority for and on behalf of itself.

(5) The contract notice shall include information which enables identification of all participating contracting authorities in the joint procurement procedure. Further, the contract notice shall state the elements of the procurement procedure for which each contracting authority is responsible.

Procurement procedures involving contracting authorities from different EU member states

Section 124. A contracting authority may apply centralised purchasing activities tendered by central purchasing bodies situated in another EU member state in accordance with the national provisions of the member state in which the central purchasing body is situated.

Section 125. Contracting authorities from different EU member states may award a joint contract, conclude a framework agreement or operate a dynamic purchasing system. Prior to the completion of the procurement procedure, the following shall be agreed between the participating contracting authorities:

- 1) The distribution of the obligations of the contracting authorities and the national provisions which apply in relation to the purchase envisaged.
- 2) The internal organisation of the procurement procedure, including administration of the procedure, the distribution of works, supplies or services to be purchased and the completion of contracts.

(2) A participating contracting authority is deemed to fulfil its obligations under this Act when a purchase is made with a contracting authority responsible for the procurement procedure.

Section 126. Contracting authorities from various EU member states which establish a joint unit shall decide which national rules apply. In this connection, the national provisions of the member state in which the joint unit is based or the national provisions of the member state in which the joint unit carries out its activities may be chosen.

Part 10

Publication and transparency

Prior information notices

Section 127. A contracting authority may publish a prior information notice to make known which purchases the contracting authority intends to make.

(2) The prior information notice shall include the information stated in Annex V, Part B, Section I of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(3) Prior information notices shall be published by electronic submission to the Publications Office of the European Union, cf (5), or in the buyer profile of the contracting authority. Where the contracting authority publishes a prior information notice in its buyer profile, prior to publication in the buyer profile, the contracting authority shall send a notice of publication to the Publications Office of the European Union in accordance with Annex VIII to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65). The contract notice shall include the information stated in Annex V, Part A of Directive 2014/24/EU of of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(4) Prior information notices may cover a period of maximum 12 months from the day the prior information notice was sent for publication. However, in connection with the purchase of social and other specific services, cf. section 187, prior information notices may cover a period in excess of 12 months.

(5) The prior information notice shall be prepared on the standard forms of the European Commission, sent to the Publications Office of the European Union electronically and published in accordance with Annex VIII to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

Contract notices

Section 128. A contracting authority shall use contract notices for invitations to submit tenders in

connection with all procedures except negotiated procedures without prior publication, cf. sections 80-83.

(2) The contract notice shall include the information stated in Annex V, Part C of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(3) The contract notice shall be prepared on the standard forms of the European Commission, sent to the Publications Office of the European Union electronically and published in accordance with Annex VIII to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

Contract award notices

Section 129. The contracting authority shall send a contract award notice to the Publications Office of the European Union no later than 30 days after the conclusion of a contract or a framework agreement. However, cf. (3) and (4).

(2) contract award notices shall include the information stated in Annex V, Part D of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(3) A contracting authority may send contract award notices made based on a framework agreement.

(4) No later than 30 days from the end of each quarter, a contracting authority shall submit contract award notices based on a dynamic purchasing system.

(5) Publication of information on the contract or framework agreement may be omitted in duly justified cases if such communication of information would prevent law enforcement or otherwise be or detrimental to the legitimate economic interests of specific economic operators or to competition between economic operators.

(6) The contract award notice shall be prepared on the standard forms of the European Commission, sent to the Publications Office of the European Union electronically and published in accordance with Annex VIII to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

Publication at national level

Section 130. A contracting authority may not publish a prior information notice, a contract notice, other elements of the procurement documents or a notice of contracts made on a national level until the prior information or notice referred to has been published by the Publications Office of the European Union. However, cf. (2).

(2) A contracting authority may publish a prior information notice, a contract notice, other elements of the procurement documents or a notice of contracts made on a national level 48 hours after receipt by the contracting authority of confirmation from the Publications Office of the European Union on receipt of the notice or information referred to.

(3) Prior information notices, contract notices or notices of contracts made which are published on a national level may not include other information than the information stated in the notices sent for publication by the Publications Office of the European Union. In the statement or notice to be published on a national level, the contracting authority shall indicate the date of submission to the Publications Office of the European Union.

Section 131. A contracting authority may publish a prior information notice in its buyer profile. However, cf. (2).

(2) A contracting authority may not publish a prior information notice in its buyer profile until notice hereof is sent to the Publications Office of the European Union. The notice of publication of the prior information notice in a buyer profile shall include the information specified in Annex V, Part A, to

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(3) When a prior information notice has been published in a buyer profile, the contracting authority may then publish the notice by other means. Prior information notices which are published by other means may not include other information than the information included in the prior information published in the buyer profile. In the prior information notice to be published by other means the contracting authority shall state the date the notice of publication in the buyer profile was sent to the Publications Office of the European Union.

Access to procurement documents

Section 132. A contracting authority shall provide free, direct and full electronic access to the procurement documents from the date of publication of the contract notice to the Official Journal of the European Union. However, cf. (2). The contracting authority shall state the electronic address at which access to the procurement documents is granted in the contract notice.

(2) Based on the specific nature of the procurement documents or owing to confidentiality, cf. section 5(2), the contracting authority may omit to provide free, direct and full electronic access to certain elements of the procurement documents. In these situations, the contracting authority shall state where and how access can be obtained for these elements of the procurement documents.

Section 133. If all procurement documents are not available on publication of the contract notice, cf. section 132(2), the contracting authority shall extend the time limit for submission of tenders by 5 days. However, no duty applies to extend the time limit in case of an urgent need of the contracting authority.

Access to additional information

Section 134. No later than 6 days before the expiry of the time limit for requests for participation or submission of tenders, a contracting authority shall provide any additional information concerning the procurement documents and any additional documents. However, cf. (2).

(2) In open procedures, restricted procedures and competitive procedures with negotiation according to the accelerated procedure, cf. section 57(5), section 59(3), section 60(6), section 63(2), cf. section 59(3) and section 65(2), cf. section 60(6), the contracting authority provide any additional information concerning the procurement documents and additional documents no later than 4 days before the expiry of the time limit of requests for participation or submission of tenders

Part 11

Exclusion, suitability and selection

Compulsory grounds for exclusion

Section 135. A contracting authority shall exclude a candidate or a tenderer from participation in a procurement procedure,

when the candidate or tenderer has been convicted or fined by final judgement for

- 1) actions committed as part of a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 (Official Journal of the European Union 2008, No. L 300, page 42),
- 2) corruption as defined in Article 3 of convention on combating of corruption involving officials of the European Union and of the EU member states and Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating of corruption in the private sector (Official Journal of the European Union 2003, No. L 192, page 54) and corruption as defined by national law in the member state or home country of the candidate or tenderer or in the country in which the candidate or tenderer is established,
- 3) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities,

- 4) acts of terror or criminal acts related to terrorist activities within the meaning of Article 1, 3 and 4, respectively, of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (Official Journal of the European Union 2002, No. L 164, page 3) and amending Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (Official Journal of the European Union 2008, No. L 330, page 21),
- 5) money laundering or financing of terrorism as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on prevention of the use of the financial system for the purpose of money laundering or financing of terrorism (Official Journal of the European Union 2005, No. L 309, page 15), or
- 6) breach of section 262 a of the Danish Penal Code or as regards a judgement issued in another country concerning child labour or other types of human trafficking as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/HJA (Official Journal of the European Union 2011, No. L 101, page 1).

(2) The contracting authority shall exclude a candidate or tenderer where a person who has been convicted by final judgement or who has been fined for the actions stated in (1) is a member of the board, management or supervisory committee of the contracting authority. Further, the contracting authority shall exclude a candidate or tenderer if the convicted person is authorised to represent, monitor or make decisions in the board, management or supervisory committee of the candidate or tenderer.

(3) The contracting authority shall exclude a candidate or tenderer which has unpaid overdue debt of DKK 100,000 or more to public authorities in relation to tax, duties or social security contributions under Danish law or under the law of the country in which the candidate or tenderer is established.

(4) The contracting authority may omit to exclude a candidate or tenderer subject to (3) where

- 1) all candidates or tenderers are subject to (3),
- 2) the candidate or tenderer provides guarantee of payment of the part of the debt which constitutes DKK 100,000 or more, or
- 3) the candidate or tenderer has agreed on a repayment scheme with the collection authority, and that scheme is observed.

(5) The contracting authority may omit to exclude a candidate or tenderer subject to (1-3) out of overriding reasons relating to the public interest.

Section 136. A contracting authority shall exclude a candidate or a tenderer from participation in a procurement procedure where the contracting authority can prove that:

- 1) in relation to the procurement procedure referred to, a conflict of interest, cf. section 24, item 18, cannot be removed effectively by less radical means,
- 2) a distortion of competition as discussed in section 39 as a result of the prior involvement of economic operators in the preparation of the procurement procedure in relation to the procurement procedure referred to which cannot be removed by less radical means, or
- 3) the candidate or tenderer of the procurement procedure referred to has provided incorrect information, retained information or is unable to submit additional documents in relation to the grounds for exclusion stated in section 135(1 or 3), and, if relevant, in section 137(1)(2 or 7) the fixed minimum requirements for suitability stipulated in sections 140-144 or selection in section 145.

Voluntary grounds for exclusion

Section 137. A contracting authority shall state in the contract notice if a candidate or tenderer will be excluded from participation in a procurement procedure, where

- 1) the contracting authority can prove that the candidate or tenderer has ignored obligations in force in the fields of environmental, social or labour law under EU law, national law, collective agreements or the obligations under environmental, social or labour law deriving from the conventions stated in Annex X to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the

European Union 2014, No. L 94, page 65) or subject to acts adopted by the European Commission under Article 57(4), cf. Article 88, of the Directive,

- 2) the candidate or tenderer has been declared bankrupt or is undergoing insolvency or winding-up proceedings, where the assets of the candidate or tenderer is being administered by a receiver or by court if the candidate or tenderer has entered an arrangement with creditors, where the commercial activities of the candidate or tenderer has been discontinued, or where the candidate or tenderer is in a similar situation under a similar procedure under national law in the jurisdiction in which the candidate or tenderer is registered,
 - 3) the contracting authority can prove that, in the exercise of its business, the candidate or tenderer has committed serious neglect which gives rise to doubt as to the integrity of the candidate or tenderer,
 - 4) the contracting authority has sufficient plausible indications to conclude that the candidate or tenderer has concluded agreements with other economic operators for the purpose of distorting competition,
 - 5) the contracting authority can prove that the candidate or tenderer has committed previous material breach of a public contract, a utility contract or a public works concession, and such breach has resulted in cancellation of the contract referred to or a similar sanction,
 - 6) the contracting authority can prove that the candidate or tenderer has attempted to interfere with the decision-making process of the contracting authority, where the candidate or tenderer has obtained confidential information which may have resulted in wrongful advantages in relation to the procurement procedure, or where the candidate or tenderer by gross negligence has provided misleading information which may have material influence on decisions on exclusion, assessment of the minimum requirements for suitability, selection or award of contract, or
 - 7) the candidate or tenderer has unpaid overdue debt of less than DKK 100,000 to public authorities in relation to tax, duties or social security contributions under Danish law or under the law of the country in which the candidate or tenderer is established.
- (2) Further, section 135(4) shall apply in the cases specified in (1)(7).

Self-cleaning

Section 138. A contracting authority may not exclude a candidate or a tenderer which has provided sufficient documentation that the candidate or tenderer is reliable, even if the candidate or tenderer is subject to one or more of the grounds for exclusion stated in sections 135-137.

(2) The contracting authority may only exclude a candidate or tenderer from the procurement procedure when the contracting authority has informed the candidate or tenderer that it is subject to exclusion, and the candidate or tenderer has not provided sufficient documentation of its reliability within a suitable time limit fixed by the contracting authority.

(3) The documentation provided by a candidate or tenderer shall be sufficient where the candidate or tenderer

- 1) has documented to the necessary extent that the candidate or tenderer has provided the compensation requested or has agreed to provide compensation for any loss resulting from its actions under the ground for exclusion, cf. section 135-137,
- 2) has accounted for the situation and circumstances to the necessary extent via active cooperation with the investigative authorities and
- 3) has implemented suitable specific technical, organisational and staff measures to prevent further breach of the Penal Code or other neglect under the grounds for exclusion.

(4) If the contracting authority considers that the documentation of reliability of the candidate or tenderer, cf. (1) is insufficient, the contracting authority shall provide grounds hereof to the candidate or tenderer.

(5) The contracting authority shall exclude a candidate or tenderer from participation in procurement procedures for 4 years from the date of the final judgement or fine for actions subject to section 135(1). Candidates or tenderers which can provide documentation of their reliability under (1-3) cannot be excluded.

(6) The contracting authority may not exclude a candidate or tenderer from participation in procurement

procedures for longer than 2 years from the date of the relevant incident or action subject to section 136(3) and 137(1)(1-6). Candidates or tenderers which can provide documentation of their reliability under (1-3) may be excluded.

Legal form of economic operators

Section 139. A contracting authority may not reject a candidate or tenderer on the grounds that Danish law requires that the candidate or tenderer must be a natural person or a legal entity.

(2) Groups of economic operators, including provisional groups, can participate in procurement procedures. The contracting authority may not require that groups of economic operators have a specific legal form. However, cf. (5).

(3) The contracting authority may specify in the procurement documents how groups of economic operators should fulfil the minimum requirements for suitability, cf. section 140-143, where this is based on objective grounds and proportional.

(4) Any condition of completion of a contract imposed on groups of economic operators which differ from the conditions imposed on individual participants shall be justified by objective reasons and shall be proportionate.

(5) Irrespective of (2), the contracting authority may require that groups of economic operators assume a specific legal form after having been awarded the contract to the extent that such a change is required in order to ensure satisfactory performance of the contract.

(6) In conclusion of service contracts, works contracts and supply contracts including services or siting and installation work, legal entities may be required to indicate in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract.

Requirements for suitability of candidates or tenderers

Section 140. A contracting authority may stipulate requirements for the suitability of candidates or tenderers in relation to

- 1) exercise of the professional activity, cf. section 141,
- 2) economic and financial standing, cf. section 142, or
- 3) technical and professional ability, cf. section 143.

(2) The contracting authority shall fix the requirements for suitability as minimum requirements in the contract notice. The contracting authority may only apply the minimum requirements for suitability which are relevant to ensure that candidates or tenderers are suitable to pursue the professional activity and that they have the economic, financial and professional standing to perform the contract referred to.

Section 141. In the assessment of the suitability of a candidate or tenderer to pursue the professional activity referred to, cf. section 140, a contracting authority may require that the candidate or tenderer is admitted to a relevant professional or trade register in the country in which the candidate or tenderer is registered, cf. Annex XI to Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65), or that the candidate or tenderer referred to fulfils requirements for documentation under that Annex.

(2) Where, in relation to a procurement procedure, a candidate or tenderer is required to have a specific authorisation or be a member of a specific organisation in order to perform the service referred to in the country in which the candidate or tenderer is registered, the contracting authority may require documentation of such authorisation or membership.

Section 142. Where candidates or tenderers are required to fulfil specific minimum requirements relating to economic and financial standing, cf. section 140, the contracting authority shall state

how the candidate or tenderer should document fulfilment of the minimum requirements for suitability in relation to economic and financial standing, cf. section 154.

(2) The contracting authority may make requirements in regard to the turnover of candidates or tenderers. However, the contracting authority may not require that the minimum annual turnover of a candidate or tenderer is higher than twice the estimated contract value, except in cases when the works, services or supplies are subject to special risks. The contracting authority shall provide grounds for such a requirement in the procurement documents.

(3) Where a contract is divided into lots, cf. section 49, (2) shall apply to the individual lots. Where more than one lot can be awarded to the same tenderer, and where the lots shall be performed simultaneously, the contracting authority may determine a minimum annual turnover for the group of lots.

(4) In a framework agreement procedure for which the contract is to be awarded by reopening of the competition, cf. section 100, requirements shall be fixed for a minimum annual turnover, cf. (1) and (2) based on the anticipated maximum value of specific contracts which will be performed simultaneously. Where the value is not known, the requirement shall be based on the estimated value of the framework agreement.

(5) For dynamic purchasing systems, requirements for the minimum annual turnover, cf. (1) and (2), shall be based on the anticipated maximum value of specific contracts awarded based on that system.

Section 143. When the candidate or tenderer is required to fulfil specific minimum requirements for technical and professional ability, cf. section 140, the contracting authority shall state in the contract notice how the candidate or tenderer should document their fulfilment of the minimum requirements for suitability in relation to the technical and professional ability for the types of documentation stated in sections 155, 157 and 158.

Candidates or tenderers based on the economic and financial standing or technical and professional ability of other entities

Section 144. A candidate or tenderer may be based on the economic and financial standing or technical and professional ability of other entities, cf. sections 142 and 143 irrespective of the legal nature of the connections between the candidate or tenderer and the entity or entities on which the candidate or tenderer is based.

(2) If a candidate or tenderer is based on other entities under (1), the candidate or tenderer shall provide statements of support or other documentation proving that the candidate or tenderer has access to the necessary economic and financial standing or technical and professional ability. The statement of support shall provide documentation of the fact that the entity referred to has a legal obligation to the candidate or tenderer.

(3) When a candidate or tenderer is based on the educational or professional qualifications, cf. section 155(7) or professional experience of other entities in relation to the performance of specific aspects of the works or services, the specific aspects of the works or services shall be performed by the entity on which the candidate or tenderer is based.

(4) A contracting authority shall verify that the entities on which the candidate or tenderer is based can prove

- 1) that they fulfil the relevant minimum requirements for suitability, cf. section 140, and
- 2) that they are not subject to the grounds for exclusion stipulated in section 135(1) or (3) and if relevant section 137(1)(2 or 7).

(5) When an entity on which a candidate or tenderer is based does not fulfil a relevant minimum requirement for suitability, cf. section 140, or when the entity is subject to a ground for exclusion, cf. sections 135-137, the contracting authority shall require that the candidate or tenderer replaces that entity. The contracting authority shall fix a suitable time limit for the candidate or tenderer for replacement of the entity subject to a ground for exclusion, cf. sections 135-137.

(6) When a candidate or tenderer is based on the economic and financial standing of other entities, the contracting authority may require that the candidate or tenderer and the entities referred to are subject to joint and severable liability for the performance of the contract.

(7) A group of economic operators, cf. section 139, can be based on the economic and financial standing and the technical and professional ability of other entities subject to the terms stated in (1-6).

(8) A contracting authority may require that certain critical tasks is performed by the winning tenderer directly or by a specific participant of a group where a tender is submitted by a group of candidates or tenderers, cf. section 139, in works contracts, services contracts or sighting and installation work related to a supplies contract.

Selection among candidates

Section 145. In restricted procedures, competitive procedures with negotiation, competitive dialogue and innovation partnerships, a contracting authority may fix a number of candidates to receive an invitation to submit a tender or participate in a dialogue.

(2) If more than one candidate fulfils the minimum requirements for suitability under section 140, and they are not subject to grounds for exclusion, cf. sections 135-137, than the number of candidates invited by the contracting authority to submit tenders, the contracting authority shall make its selection based on objective and non-discriminatory criteria.

(3) The contracting authority shall state the following in the contract notice:

- 1) The number of candidates the contracting authority intends to invite to submit tenders or participate in a dialogue. The number can be stated as an interval.
- 2) The information provided by the candidate or tenderer which will form the basis of the selection.
- 3) The objective and non-discriminatory criteria which are emphasised in relation to the selection.

(4) The number of candidates the contracting authority intends to invite to submit tenders or participate in a dialogue must be sufficient to ensure competition. The contracting authority shall

- 1) invite minimum five candidates to submit tenders in restricted procedures, cf. section 59(4), and
- 2) invite minimum three candidates to submit tenders or participate in dialogue in competitive procedures with negotiation, cf. section 61, competitive dialogue, cf. section 67, and innovation partnerships, cf. section 73.

Selection of tenders and solutions in competitive procedures with negotiation, competitive dialogue and innovation partnerships

Section 146. When a contracting authority uses the option to limit the number of tenders to be negotiated, cf. section 62(2) and section 74(2)(4) or the number of solutions to be subject to dialogue, cf. 68(2)(1), the restriction of tenders and solution shall be based on the criteria fixed in the contract notice or in the additional procurement documents.

(2) A contracting authority shall fix the number of participants or solutions in the last stage in order to ensure competition.

Changes to selected candidates or tenderers

Section 147. A contracting authority may accept changes to candidates and tenderers subject to fulfilment of the principles stated in section 2 in the following cases:

- 1) Where a candidate or tenderer replaces a business on which the candidate or tenderer bases its economic and financial standing or its technical and professional ability, and this is caused by circumstances which can be proven to be outside the control of the candidate or tenderer. A candidate or tenderer may not replace a business on which the candidate or tenderer is based where the business has had decisive influence on the assessment in respect of the completion of the minimum requirements for suitability, cf. section 140, or of the selection, cf. section 145, or of the evaluation of the tender, cf. section 160.

- 2) Where a participant in a group leaves the group unless the participant has had decisive influence on the evaluation in respect of the fulfilment of the minimum requirements for suitability, cf. section 140, or of the selection, cf. section 145, or of the evaluation of the tender, cf. section 160.
- 3) When a participant in a group is replaced owing to circumstances which can be proven to be outside the control of the other participants. A participant may not be replaced where the participant has had decisive influence on the assessment in respect of the fulfilment of the minimum requirements for suitability, cf. section 140, or of the selection, cf. section 145, or of the evaluation of the tender, cf. section 160.
- 4) Where a candidate or tenderer participates in a merger or otherwise implements a business reorganisation. Changes shall only be allowed if the assessment in respect of the minimum requirements for suitability, cf. section 140, the selection, cf. section 145, or the evaluation of the tender, cf. section 160, would not have resulted in a different outcome if the business reorganisation had been carried out before the assessment of the contracting authority.
 - (2) The contracting authority may only accept changes if the candidate or tenderer fulfils the fixed minimum requirements for suitability after the change, cf. section 140.
 - (3) The contracting authority shall verify that the candidate or tenderer is not subject to the grounds for exclusion stated in section 135(1) or (3) and section 137(1)(2 or 7), even after a change subject to (1). The contracting authority shall exclude candidates or tenderers when they are subject to the grounds for exclusion stated in sections 135 and 136 after the change, and when relevant, section 137.
 - (4) The contracting authority may not accept extension of a group by further participants after the expiry of the time limit for requests for participation or submission of tenders.
 - (5) Where a restricted procedure is applied, the contracting authority may invite a new candidate to submit tender if one of the original candidates is unable to submit a tender owing to circumstances outside the control of the contracting authority. In that case, the contracting authority shall ensure that the candidates have sufficient time for preparing their tenders. The new candidate shall be found in accordance with the selection already made, and thus, the new candidate shall be the candidate which best fulfils the criteria for selection of the candidates which were not selected.

Part 12

Documentation of exclusion, minimum requirements for suitability and selection

European Single Procurement Document

Section 148. A contracting authority shall require that candidates or tenderers apply the European Single Procurement Document as preliminary evidence

- 1) that the candidate or tenderer are not subject to the grounds for exclusion stipulated in section 135(1) or (3) and section 137(1)(2 or 7).
 - 2) that the candidate or tenderer fulfils the minimum requirements for suitability fixed in accordance with section 140, and,
 - 3) if relevant, how the candidate or tenderer fulfils the objective and non-discriminatory criteria of selection, cf. section 145(2).
- (2) A contracting authority shall require that the candidate or tenderer states the following information in the European Single Procurement Document:
- 1) information stated in (1) relating to entities on which the candidate or tenderer bases its economic and financial standing or its technical and professional ability under section 144,
 - 2) the public authority or third party responsible for preparing documentation of the information stated under (1) and stating that, on request, the candidate or tenderer may present that documentation without undue delay, and
 - 3) whether and how the contracting authority can obtain knowledge about the necessary information via national database and gain direct access to the documentation required, cf. section 152.

Section 149. The Minister for Business and Growth may fix detailed rules on the use of standard forms, including about forms for the use of the European Single Procurement Document under section 148(1).

Section 150. A candidate or tenderer may reuse the European Single Procurement Document used by the candidate or tenderer in a previous procurement procedure on the condition that the applicant or tenderer confirms that the information is still correct.

Section 151. Before the contracting authority decides to award the contract, a contracting authority shall require that the tenderer to which the contracting authority intends to award the contract presents documentation in accordance with section 152 of the information provided in the European Single Procurement Document in accordance with section 148. However, cf. (3) and (5). The contracting authority shall fix a suitable time limit for presentation of the documentation by the tenderer.

(2) At any time during the procurement procedure, the contracting authority may require that the candidate or tenderer presents documentation as stated in 152, cf. however (3) and (5) when that is necessary in order to ensure correct performance of the procedure. In such situations, the contracting authority shall fix a suitable time limit for presentation of the documentation by the candidate or tenderer.

(3) Subsection 1 shall not apply to contracts based on framework agreements where such contracts are awarded in accordance with section 97 or section 98(1)(1).

(4) The contracting authority may request the candidate or tenderer to provide further or more specific information for documentation received pursuant to sections 153-155, 157 and 158.

(5) Irrespective of (1) and (2), the candidate or tenderer shall not be obligated to present the documentation where

- 1) the contracting authority can provide the certificates or the relevant information directly via access to a national database or
- 2) the contracting authority is already in possession of the necessary documentation from previous procurement procedures.

Documentation

Section 152. As evidence for the absence of grounds for exclusion, cf. section 135(1) or (3) and section 137(1)(2 or 7), and that the minimum requirements for suitability are fulfilled, cf. section 140, a contracting authority shall require the documentation referred to in sections 153-155, 157 and 158, cf. section 151(1) or (2).

(2) The contacting authority may not require any other types of documentation than that stated in sections 153-155, 157 and 158 and documentation required under section 141.

(3) To the greatest extent possible, the contracting authority shall require the types of documentation specified in e-Certis where this covers the needs of the contracting authority.

Section 153. A contracting authority shall accept the following as documentation of the fact that the candidate or tenderer are not subject to the grounds for exclusion stipulated in section 135(1) or (3) and section 137(1)(2 or 7):

- 1) An extract from the relevant register or a similar document issued by a competent judicial or administrative authority stating that the candidate or tenderer is not subject to the grounds for exclusion stipulated in section 135(1).
- 2) A certificate issued by the competent authority in the country referred to as documentation that the candidate is not subject to the grounds for exclusion stipulated in the cases stated in section 135(3) and section 137(1)(2 or 7).

(2) If the country in question does not issue the documents or certificates stated in (1), or if such documents or certificates do not cover all the cases mentioned in section 135(1) or (3) and section 137(1)(2 or 7), those documents or certificates can be replaced by a statement provided on oath. If statements on oath are not provided for in the relevant country, a solemn declaration made before a competent judicial or administrative authority, a notary or a competent professional organisation in the country in which the candidate or tenderer is registered, can be applied.

Section 154. A contracting authority may require that the candidate or tenderer provides documentation of its economic and financial standing. This may be fulfilled in one or more of the following ways:

- 1) Presentation of relevant statements from a bank or documentation of relevant professional risk indemnity insurance.
- 2) Presentation of annual reports or excerpts hereof if publication of annual reports is required under the law of the country in which the candidate or tenderer is established.
- 3) Presentation of a statement on the total turnover of the candidate or tenderer or the turnover in the field relevant to the contract for up to the last 3 financial years available depending on when the candidate or tenderer was established or commenced its activities.

(2) A candidate or tenderer can prove its economic and financial standing by means of any other document which the contracting authority deems to be appropriate where the candidate or tenderer is unable to present the documents requested by the contracting authority for a valid reason.

Section 155. A contracting authority may require that the candidate or tenderer provides documentation of its technical and professional ability. This shall be fulfilled in one or more of the following ways:

- 1) A list of all works performed within the last 5 years accompanied by certificates of satisfactory performance and results of the main work. When necessary in order to ensure sufficient competition, the contracting authority may indicate that documentation of relevant work carried out more than 5 years previously will also be considered.
- 2) A list of the main deliveries of supplies or services carried out within the last 3 years stating amount and time and the public or private recipient. When necessary in order to ensure sufficient competition, the contracting authority may indicate that documentation of relevant deliveries of supplies and services carried out more than 3 years previously will also be considered.
- 3) Information about the engineers or technical bodies involved, particularly those responsible for quality control irrespective of whether they belong directly or indirectly to the business of the candidate or tenderer and whether it concerns works contracts, information about the engineers or technical bodies involved and which the contractor has access to during the performance of the work.
- 4) Description of the technical equipment and the steps taken by the candidate or tenderer to ensure quality and the examination and research facilities of the business.
- 5) Statement of the supply chain administration and the tracking systems which the candidate or tenderer can apply during the performance of the contract.
- 6) A check carried out by or on behalf of the contracting authority by a competent official body of the country in which the supplier or the service provider is established subject to that body's approval of the production capacity of the supplier or the technical and professional ability of the service provider and, if necessary, the study and research facilities of the business and its planned steps to control quality. This only applies where the products or services to be supplied are complex or, exceptionally, are required for a special purpose.
- 7) Statement of the educational and professional qualifications of the service provider or contractor or the managerial staff of the business when they are not being evaluated as an award criterion.
- 8) Statement of the environment control measures which the candidate or tenderer can apply during the performance of the contract.
- 9) A statement of the average annual number of staff of the service provider or contractor and the number of managerial staff in the last 3 years.
- 10) A statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract.
- 11) A statement of the proportion of the contract which the candidate or tenderer intends to subcontract.

- 12) With regard to the goods to be supplied:
- a) Samples, descriptions or photographs, the authenticity of which must be certified if the contracting authority so requests.
 - b) Certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

Official lists of approved economic operators and certification

Section 156. The Minister for Business and Growth may stipulate detailed rules on the creation and use of lists of approved economic operators or rules on certification to be carried out by certifying bodies with a view to document a specific minimum level for economic and financial standing or technical and professional ability.

Quality assurance standards and environmental management standards

Section 157. A contracting authority may require that a candidate or tenderer presents certificates from independent bodies confirming that the candidate or tenderer complies with specific quality assurance standards. If the contracting authority requires compliance with specific quality assurance standards, the contracting authority shall refer to quality assurance systems based on the relevant European standards series certified by approved bodies.

(2) A contracting authority shall accept similar certificates from bodies in other member states.

(3) A contracting authority shall always accept other relevant documentation where

- 1) a candidate or tenderer cannot obtain the required certificate for a quality assurance standard or a similar certificate within the time limit stipulated for reasons which are not attributable to the that candidate or tenderer, or
- 2) a candidate or tenderer does not have the required certificate for a quality assurance standard even if it was obtainable within the time limit stipulated, and the contracting authority is satisfied that the quality assurances measures suggested are similar to the measures required in relation to the quality assurance standard required, and the resources spent by the contracting authority are found in a specific assessment not to exceed the resources which the contract authority would have been required to spend in order to verify that the tenderer is in possession of the required quality assurance standard.

Section 158. A contracting authority may require that a candidate or tenderer presents certificates from independent bodies confirming that the candidate or tenderer complies with specific environmental management systems or environmental management standards. Where the contracting authority requires compliance with specific environmental management systems or environmental management standards, the contracting authority shall refer to the EU arrangement governing environmental management and audit scheme (EMAS), cf. Regulation (EC) 1221/2009 of the European Parliament and of the Council, or other recognised environmental management systems under Article 45 of Regulation (EC) 1221/2009 of the European Parliament and of the Council, or other environmental management standards based on the relevant European or international standards issued by approved bodies.

(2) A contracting authority shall accept similar certificates from bodies in other member states.

(3) A contracting authority shall always accept other relevant documentation where

- 1) a candidate or tenderer cannot obtain the required certificate for an environmental management system or an environmental management standard or a similar certificate within the time limit stipulated for reasons which are not attributable to that candidate or tenderer, or
- 2) a candidate or tenderer does not have the required certificate for an environmental management system or an environmental management standard even if could have been obtained within the fixed time limit, and the contracting authority finds that the measures suggested correspond to the measures required in relation to the environmental management system required or the environmental

management standard, and the resources required from the contracting authority in this connection or a specific assessment exceeds the resources which the contracting authority would have to spend on verifying that the tenderer has the required environmental management system or the required environmental management to an inexpedient degree.

Part 13

Contract award procedure

Section 159. A contracting authority shall award the contract in accordance with sections 161-165 on the criteria for award of the contract and, if relevant, sections 166-168 on the calculation of life cycle costs and section 169 on abnormally low tenders.

(2) A contracting authority may only award the contract if the contracting authority has verified that the tender complies with the requirements fixed in the contract notice and the additional procurement documents. Further, the contracting authority shall obtain verification on the basis of the European Single Procurement Document, cf. sections 148-151, of documentation obtained under section 152(1) and e-Certis, cf. section 52(3), that the tender was submitted by a tenderer,

- 1) which is not excluded subject to sections 135-137,
- 2) which fulfils the minimum requirements for suitability fixed by the contracting authority under sections 140-143, and
- 3) which, if relevant, is selected to submit a tender via selection under section 145.

(3) In case of doubt, the contracting authority shall carry out effective verification of the information and documentation of the request to participate or the tender.

(4) If the contracting authority arranges an open procedure, the contracting authority may choose to evaluate the tenders before the contracting authority verifies that the conditions of (2)(1) and (2)(2) (1-3) are fulfilled.

(5) While observing the principles of section 2, the contracting authority may request the candidate or tenderer to supplement, specify or complete the request for participation or tender by submitting relevant information or documentation within a suitable time limit, where the information or documents submitted by candidates or tenderers in relation to a request to participate or a tender are incomplete or incorrect, or where specific documents are missing. The request may not result in submission by the candidate or tenderer of a new request to participate or a new tender.

(6) Irrespective of (5), the contracting authority shall reject a request or tender if it is stated expressly in the procurement documents that a specific error or omission will result in rejection of the request or tender, and the request or tender referred to includes such an error or omission.

(7) The contracting authority may omit awarding a contract to the tenderer submitting the most financially advantageous tender if, after hearing the tenderer, the contracting authority can prove that the tender is not in accordance with the obligations under environmental, social or labour law in accordance with EU law, national law or collective agreements or in accordance with the environmental, social or labour law obligations deriving from the conventions stated in Annex X to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

Contract evaluation procedure

Section 160. A contracting authority shall state the award criteria, describe the evaluation method and describe the elements of importance in the evaluation of the tender in the procurement documents.

(2) A method of evaluation described in the procurement documents in accordance with (1) may not be disregarded by boards of appeals and courts provided it is transparent and observes the principle of equal treatment.

Contract award criteria

Section 161. A contracting authority shall award the contract to the tenderer which has submitted the most economically advantageous tender.

Section 162. A contracting authority shall identify most economically advantageous tender based on one of the following award criteria:

- 1) Price,
- 2) costs or
- 3) best price-quality ratio.

(2) When the award criterion cost is applied, all types of costs may be included, including prices and life cycle costs, cf. section 166.

(3) When the award criteria best price-quality ratio is used, cf. (1) (3), the tender shall be based on sub-criteria such as qualitative, environmental and social aspects. The sub-criteria may include

- 1) quality, including technical value, aesthetic and functional characteristics, availability, design for all users, social, environmental and innovation characteristics and trade and conditions hereof,
- 2) the organisation of the staff which will perform the contract and their qualifications and experience, where the quality of the staff which will perform the contract may affect the level of performance of the contract to a significant extent, or
- 3) customer service, technical assistance and terms of delivery.

(4) When the award criteria of (1)(3) is used, the contracting authority can set the price or costs to ensure that competition is carried out based on qualitative criteria only.

Section 163. If a contracting authority uses sub-criteria, such sub-criteria shall be related to the subject-matter of the contract.

(2) Sub-criteria are related to the subject-matter of the contract when they are related to the works, supplies or services to be supplied under the contract as regards every aspect and every step of their life cycle, including factors which form part of

- 1) the specific process of production or supply of or trade in the works, supplies or services related to or
- 2) a specific process for another stage in their life cycle.

(3) Subsection 2 applies even if such factors do not form part of the material content of the purchase.

Section 164. A contracting authority shall fix award criteria which are transparent, and the criteria may not confer an unrestricted freedom of choice between tenders on the contracting authority. The criteria shall ensure effective competition for the contract.

(2) In case of doubt, the contracting authority shall carry out effective verification of the information and documentation of the tender.

Section 165. A contracting authority shall state its weighting of the stipulated sub-criteria. This does not apply when the assessment is based only on the award criteria price or costs, cf. section 162(1)(1 and 2).

(2) The weighting may be stated by fixing a suitable interval.

(3) If weighting according to (1) is not possible for objective reasons, the contracting authority shall state the criteria in the order of priority.

Life cycle costs

Section 166. By using the award criteria costs and best price-quality ratio, cf. section 162(1)(2 and 3), a contracting authority can include life cycle costs. The calculation of life

cycle costs may include part or all of the following costs of the life cycle of supplies, services or works:

- 1) Costs paid by the contracting authority or other users, including
 - a) costs related to acquisition,
 - b) costs related to use, such as consumption of energy and other resources,
 - c) costs for maintenance and
 - d) costs related to disposal, e.g. collection and recovery.
- 2) Costs which may be attributed to external environmental effects and which are connected to the supplies, services or works during the life cycle where their monetary value can be determined and verified. Those costs may include costs related to greenhouse gas emissions and other polluting emissions and other costs related to countering of climate change.

Section 167. A contracting authority shall state the information to be presented by the tenderer and the method used by the contracting authority for the calculation of life cycle costs where the contracting authority assesses the costs based on the life cycle costs, cf. section 166, in the contract notice.

Section 168. The method applied for the assessment of costs related to external environmental effects shall fulfil the following conditions:

- 1) The method shall be based on non-discriminatory criteria which can be verified objectively, in particular when it is not prepared for repeated or uninterrupted use.
 - 2) The method may not result in wrongful favouring of specific economic operators or result in a less favourable position for them.
 - 3) The method shall be available to all economic operators.
 - 4) The information required shall be obtainable by reasonable efforts by economic operators who exercise general care, including tenderers from third countries which are parties to the Agreement on Government Procurement (GPA) or other international agreements binding on the EU.
- (2) The Minister for Business and Growth may fix detailed rules for the calculation of life cycle costs.

Abnormally low tenders

Section 169. If a tender appears to be abnormally low, the contract authority shall request the tenderer to account for the prices and costs stated in the tender within a suitable time limit, cf. (2).

(2) A contracting authority may only reject a tender as abnormally low where the price or cost level tendered cannot be substantiated based on the account of the tenderer. The account may relate to

- 1) savings in connection with manufacturing methods for supplies or services or construction methods,
- 2) the technical solutions applied or an unusually favourable position of the tenderer regarding supply of the goods or services or performance of the work,
- 3) the originality of the work, supplies or services tendered by the tenderer, or
- 4) any state aid awarded to the tenderer, cf. (4).

(3) The contracting authority shall reject a tender where the tender is abnormally low because the tenderer or the tenderer's sub-contractor has disregarded obligations in force in the field of environmental, social or labour law in accordance with EU law, national law or collective agreements or in accordance with the environmental, social or labour law obligations deriving from the conventions stated in Annex X to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65).

(4) A contracting authority may only reject a tender as abnormally on the grounds that the tenderer has received state aid where the tenderer has not proven within a reasonable time limit that the

aid referred to is compatible with the internal market, cf. Article 107 of the Treaty on the Functioning of the European Union.

(5) If the contracting authority rejects a tender owing to state aid, the contracting authority shall inform the Danish Competition and Consumer Authority hereof. The Authority will subsequently inform the European Commission.

Revocation of award decision

Section 170. A contracting authority may revoke an award decision and resume the evaluation of tenders where

- 1) errors were committed in the original evaluation of tenders,
- 2) the contract has not yet been concluded,
- 3) the confirmation period fixed has not expired, and
- 4) all tenderers are informed that the award decision is being revoked and the evaluation of tenders resumed.

(2) If the contracting authority revokes an award decision, the contracting authority shall make a new award decision based on a new evaluation of the same tenders which formed the basis of the original award decision and applying the method described in the procurement documents.

Part 14

Information to candidates, tenderers, etc.

Information to candidates and tenderers

Section 171. A contracting authority shall inform all candidates and tenderers involved simultaneously and in writing of the decisions made by the contracting authority, including decisions regarding

- 1) selection of economic operators,
- 2) restriction of the number of tenders and solutions,
- 3) award of contract,
- 4) access to a dynamic purchasing system and
- 5) cancellation of the procurement procedure.

(2) Information relating to decisions as stated in (1)(1) for unsuccessful candidates shall be accompanied by the reasons for rejection of the request for participation of a candidate and the name of the candidates selected.

(3) Information relating to decisions in accordance with (1)(2) for unsuccessful tenderers shall be accompanied by reasons which fulfil the requirements of (4)(1 and 2). The names of the tenderers to proceed shall be stated.

(4) A contracting authority shall state in information relating to decisions as stated in (1)(3) the date of expiry of the standstill period, cf. section 3 of the Act on the Danish Complaints Board for Public Procurement. Decisions shall be accompanied by the following grounds:

- 1) For tenderers submitting unacceptable tenders, the contracting authority shall state the grounds of rejection of the tender.
- 2) For tenderers submitting an acceptable tender, the contracting authority shall state the characteristics and advantages of the winning tender in relation to the rejected tender and the name of the winning tenderer or the parties to the framework agreement. For innovation partnerships, competitive procedures with negotiation or competitive dialogue, the contracting authority shall also account for the negotiation process or the dialogue with the tenderers.

(5) As stated in (1)(4), a contracting authority shall state the grounds to unsuccessful tenderers of the rejection of their request for their admission to the dynamic purchasing system.

(6) In information relating to decisions under (1)(5), a contracting authority shall state the grounds of cancellation of a procurement procedure.

Section 172. In special cases, a contracting authority may omit the statement of certain information relating to the award of a contract, conclusion of framework agreements or admission to a dynamic purchasing system as described in section 171 where stating such information would be contrary to public interest, detrimental to the legitimate financial interests of specific public or private operators or detrimental to an effective competition between economic operators.

Section 173. A contracting authority may not conclude a contract until after the expiry of any standstill period under section 3(1) or (2) of the Act on the Danish Complaints Board for Public Procurement., at the earliest.

Individual reports on procedures for the award of contracts and establishment of dynamic purchasing systems

Section 174. After completion of a procurement procedure and during the establishment of a dynamic purchasing system, a contracting authority shall prepare a written report which shall include the following information:

- 1) The name and address of the contracting authority and the subject-matter of the framework agreement or the dynamic purchasing system.
- 2) The outcome of the evaluation of suitability and any selection under sections 145 and 146 stating
 - a) the names of the candidates or tenderers selected and the grounds for selecting them and
 - b) the names of the rejected candidates or tenderers and the grounds for rejecting them.
- 3) The grounds for disregarding tenders considered to be abnormally low.
- 4) The name of the tenderer the tender of which is accepted and the grounds for selecting the tender of that tenderer, and, if known,
 - a) information on the share of the contract or the framework agreement which the tenderer intends to sub-contract to third parties, and
 - b) the names of any sub-contractors of the tenderer.
- 5) In competitive procedures with negotiation and competitive dialogue, the circumstances stated in sections 61 and 67 which constitute the grounds of the use of those procedures.
- 6) In negotiated procedures without prior publication, the circumstances stated in sections 80-83 which constitute the grounds for the use of that procedure.
- 7) In innovation partnerships the circumstances stated in section 73 which constitute the ground for the use of that procedure.
- 8) where applicable, the grounds for the decision of the contracting authority not to award a contract or a framework agreement or establish a dynamic purchasing system.
- 9) where applicable, the grounds for the use by the contracting authority of other means of communication than electronic means for submission of tenders.
- 10) where applicable, the conflicts of interest detected and subsequent measures taken by the contracting authority.
- 11) where applicable, measures carried out by the contracting authority under section 39 as a result of previous inclusion of economic operators in the preparation of the tender.

(2) Subsection 1 shall not apply to the conclusion of a contract based on a framework agreement under section 97 and 98(1)(1).

(3) When a contract award notice, cf. section 129 and 189, includes the information in (1), the contracting authority may refer to the contract award notice.

(4) A contracting authority shall document the progress of all procurement procedures and keep sufficient documentation to be able to provide grounds for decisions made at all states of the procurement procedure.

(5) The documentation shall be kept throughout the term of the contract and minimum 3 years of the date of award of the contract.

(6) On request, a contracting authority shall submit the report or the main elements of the report to the Competition and Consumer Authority or the European Commission.

Storage of contracts

Section 175. For the term of the contract, a contracting authority shall keep copies of all contracts received at a value equal to or higher than DKK 7,444,000 for supplies contracts or services contracts and DKK 74,440,000 for works contracts.

(2) A contracting authority shall grant access to contracts subject to (1) for anyone who requests such access unless section 5 stipulates otherwise.

Part 15

Performance of the contract

Conditions related to the performance of the contract

Section 176. A contracting authority may fix special conditions of the performance of a contract. The conditions shall be related to the subject-matter of the contract, cf. section 163, and shall be stated in the contract notice or the additional procurement documents. Such conditions may include financial, innovation, environmental, social or employment considerations.

Sub-contractors

Section 177. A contracting authority may require in the procurement documents that a tenderer states in its tender which elements of the contract the tenderer intends to sub-contract to third parties and which sub-contractors the tenderer suggests.

(2) A contracting authority shall include a contract clause in connection with conclusion of works contracts and services contract which obligates the supplier to state name, contact information and legal representation for the sub-contractors used in connection with the performance of the contract. The information shall be provided at the time of commencement of performance, at the latest, provided they are known at the time.

(3) A contracting authority may require in connection with supply contracts that the supplier states the name and contact information and legal representation of the sub-contractors used in connection with the performance of the contract.

(4) A contracting authority may require the information under (2)(3) for sub-contractors further down the chain of sub-contractors.

(5) A contracting authority may require that tenderers and candidates declare in their requests to participate or tender that sub-contractors are not subject to one of the situations which result in exclusion under sections 135-137. If a sub-contractor is subject to one or more of the grounds for exclusion under sections §§ 135-137, the contracting authority shall require replacement of the sub-contractor.

Changes to contracts, etc.

Section 178. In case of material changes to a contract or framework agreement, the contracting authority shall arrange a new procurement procedure in accordance with this Act.

(2) A change to a contract or framework agreement is deemed to constitute a material change where it renders the contract or the framework agreement materially different in character from the one initially concluded.. Unless otherwise provided by sections 179-183, a change is always deemed to constitute a material change where

- 1) the contracting authority introduces conditions which would have provided access for other candidates than those originally selected or enabled acceptance of another tender than the tender originally accepted or would have attracted further participants to the procurement procedure,
- 2) the economic balance of the contract or framework agreement is changed to the advantage of the supplier in a way which was not provided for by the original contract or framework agreement

- 3) the change results in considerable extension of the scope of the contract or framework agreement, or
- 4) a new supplier replaces the one to which the contracting authority had initially awarded the contract.

Section 179. Changes to a contract or a framework agreement which is envisaged in the procurement document in clear, precise and unequivocal clauses are not deemed to be material changes. The clauses shall determine the scope and nature of any changes or options for changes and the conditions of their use and may not alter the overall nature of the contract or framework agreement.

Section 180. Changes to a contract or framework agreement shall not be deemed to be material changes where the value of the changes is lower than

- 1) the thresholds stated in section 6 and
- 2) 10 percent of the value of the original contract for service and supply contracts or lower than 15 percent of the value of the original contract for works contracts.

(2) If several changes have been made to the same contract or framework agreement, the value of the changes shall be added in the calculation.

(3) However, changes under (1) may not alter the overall nature of the contract or framework agreement.

Section 181. Changes relating to supplementary works, services or supplies from the original supplier shall not be deemed to be material changes to the contract where such changes are necessary for the performance of the contract and where the use of another supplier

- 1) would not be possible without causing significant financial or technical inconvenience, and
- 2) would result in significant problems or a significant increase in the costs of the contracting authority.

(2) The value of supplementary works, services or supplies may not exceed 50 percent of the value of the original contract.

(3) If a number of successive changes are made, the restriction stated in (2) shall apply to each change.

Section 182. Replacement of the original supplier shall not be deemed to be a material change to the contract where such replacement is carried out as a result of

- 1) a clear, precise and unequivocal amendment clause or option, cf. section 179, or
- 2) full or part adoption of the rights of the original supplier as a result of reorganisation of the original supplier including in the form of take-overs, mergers, acquisitions or insolvency where the original criteria of qualitative selection are fulfilled, and when the replacement does not result in other fundamental changes to the contract and do not serve to circumvent the application of this act.

Section 183. Changes to a contract shall not be deemed to be material changes where

- 1) the need for the change could not be foreseen by a diligent contracting authority,
- 2) the overall nature of the contract is not altered, and
- 3) the value of the change does not exceed 50 per cent of the value of the original contract.

Section 184. The maximum change in value permitted under sections 180, 181 and 183 shall be based on the updated price at the time of the change where the contract includes a price indexation clause.

(2) In connection with changes to a contract under sections 181 and 183, the contracting authority shall publish a notice hereof in the Official Journal of the European Union 2014. The notice shall include the information stated in Annex V, Part G of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 6), and the notice shall be published in accordance with section 129(6).

Termination of contracts

Section 185. The contracting authority may terminate a contract or framework agreement where

- 1) the contract or framework agreement has been subject to a material change which would require a new procurement procedure, cf. section 178,
- 2) the supplier was subject to one of the grounds for exclusion under section 135-137 at the time of award of the contract with subsequent exclusion of the supplier from the procurement procedure, or
- 3) the contract or framework agreement ought not have been awarded to the supplier owing to serious breach of the obligations under the Treaties and the Directive established by the European Court of Justice in connection with a procedure under Article 258 of the Treaty on the Functioning of the European Union.

(2) Where an award decision has been cancelled by final decision or judgement, the contracting authority shall terminate a contract or framework agreement concluded based on this decision subject to suitable notice unless special conditions exist which warrant the continuation of the contract. This provision shall not apply where sections 16 or 17 of the Act on the Danish Complaints Board for Public Procurement apply. Any decision by the contracting authority on the continuation of the contract shall be published in the same place as the procurement documents no later than 7 calendar days after publication of the final decision or judgement.

Title III

Procurement of social and other specific services above the threshold

Part 16

Procedures and publication of notices and statements

Section 186. A contracting authority shall determine a procedure in accordance with section 2, including specification of award criteria for purchasing of social and other specific services, cf. section 7.

Section 187. In procurement of social and other specific services, a contracting authority shall publish a contract notice or a prior information notice.

(2) Contract notices shall include the information described in Annex V, Part H, of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65) in accordance with the standard forms of the European Commission and the information on the procedure stipulated by the contracting authority in accordance with section 186.

(3) Prior information notices shall include the information stated in Annex V, Part I of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65). The notice shall state that contracts will be awarded without further publication, and it shall invite interested economic operators to communicate their interest in writing.

(4) The contract notice or the prior information notice shall be published either by electronic transmission to the Publications Office of the European Union or in the buyer profile of the contracting authority.

(5) Subsection 1 may be deviated from in cases similar to those subject to sections 80-83.

Section 188. A contracting authority shall award contracts in accordance with the procedure stipulated by the contracting authority, cf. section 186.

(2) Communication to candidates and tenderers shall take place in accordance with section 171.

(3) A contracting authority may not conclude a contract until after the expiry of the standstill period under section 3(1) or (2) of the Act on the Danish Complaints Board for Public Procurement, at the earliest.

Section 189. No later than 30 days from the end of each quarter, the contracting authority shall submit notices concerning contracts concluded on the basis of section 186.

(2) Contract award notices shall include the information stated in Annex V, Part J of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 public procurement and repealing Directive 2004/18/EC (the Official Journal of the European Union 2014, No. L 94, page 65). The notice shall be prepared on the standard form of the European Commission.

(3) After the conclusion of the procedure subject to section 186, a contracting authority shall prepare a written report in accordance with section 174.

Part 17

Reserved contracts for organisations for certain services

Section 190. The contracting authority may reserve the right to participate in the procurement procedure for organisations solely engaged in the health, social and cultural services described in section 186.

(2) An organisation in accordance with the description in (1) shall fulfil the following conditions:

- 1) The objective of the organisation is the pursuit of a public service work linked to the delivery of the services described in (1).
- 2) The profit is reinvested with a view to achieving the organisation's objectives. Where profits are distributed or redistributed, this shall be based on participatory considerations.
- 3) The structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders.
- 4) The organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this provision within the past three years.

(3) The term of the contract may not exceed 3 years.

(4) The contract notice or prior information notice shall include reference to this provision.

Title IV

Public procurement under the thresholds with certain cross-border interest

Section 191. A contracting authority shall advertise the contract prior to conclusion of supply and service contracts with certain cross-border interest, cf. section 10.

(2) The Minister for Business and Growth may fix detailed rules on advertising as mentioned in (1).

Section 192. A contracting authority shall in accordance with section 2 determine an award procedure, including award criteria.

(2) A contracting authority shall inform potential tenderers of the award procedure in a way which enables interested tenderers to submit tenders.

(3) A contracting authority shall simultaneously and in writing inform all tenderers which have submitted tenders about the award decision, including if relevant the grounds for cancelling the procedure. The contracting authority shall on request inform the tenderer of the grounds for the decision.

Title V

Public procurement under the thresholds without certain cross-border interest

Section 193. A contracting authority shall ensure that the purchase is carried out on market terms prior to conclusion of supply and service contracts without certain cross-border interest, cf. section 11. For example, the contracting authority may

- 1) carry out a screening of the market and invite one tender based on that screening,
- 2) invite two or more tenders, or

3) publish an advertisement on the website of the contracting authority or in accordance with the rules introduced under section 191(2).

(2) A contracting authority which invites more than three tenders shall provide a brief statement of the grounds for the invitation of more than three tenders and inform the tenderers of the maximum number of tenders which will be invited.

(3) If a contracting authority receives more than one tender, the contracting authority shall inform all tenderers simultaneously of the decision made regarding the award. The contracting authority shall on request provide information of the grounds for the decision.

(4) To the extent necessary, the contracting authority shall be able to prove that the purchase took place subject to market terms, cf. section 1.

(5) A contracting authority making procurements in accordance with this provision shall act in accordance with the principles of administrative law on impartiality, financially sound administration, prohibition against protection of irrelevant interests and the principle of proportionality.

Title VI

Provisions for authorisation

Section 194. The Minister for Business and Growth shall establish rules on the use of electronic means of communication in connection with the exchange of information under this Act or rules issued pursuant to this Act.

(2) The Minister for Business and Growth may establish rules with a view to implementing European Directives on the procedures governing the conclusion of contracts in the fields of water and energy supply, transport and postal services. Further, the Minister for Business and Growth may establish rules with a view to implementing European Directives on the coordination of procedures for conclusion of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and the award of concession contracts. Further, the Minister for Business and Growth may establish rules concerning the enforcement of such rules.

(3) Following negotiation with the Minister for Finance, the Minister for Business and Growth may establish rules with a view to implementing other European acts including specific rules on standardisation in public procurement of information technology.

Title VII

Right to complain, commencement and changes to other legislation, etc.

Part 18

Right to complain and commencement

Section 195. Anyone with a legal interest or otherwise entitled to appeal under the Act on the Danish Complaints Board for Public Procurement may bring issues related to breach of the provisions of this Act and rules issued under this act before the Danish Complaints Board for Public Procurement. However, cf. (2).

(2) Complaints of the award of contracts subject to section 11 may not be brought before the Danish Complaints Board for Public Procurement.

Section 196. This Act shall enter into force as per 1 January 2016.

(2) This Act shall not apply to procurement procedures commenced before 1 January 2016.

(3) Sections 178-184 shall apply to all contracts after the commencement of the Act on 1 January 2016, even if the contract was concluded under previous rules on procurement procedures.

(4) Executive Order No. 712 of 15 June 2011 on the procedures for conclusion of public supplies contracts, public services contracts and public works contracts shall be repealed.

(5) The Act on coordination of procedures for conclusion of works contracts and procurement, cf. Executive Order No. 600 of 30 June 1992 shall be repealed.

(6) The administrative rules established under the Act on coordination of procedures for conclusion of works contracts and procurement, cf. Executive Order No. 600 of 30 June 1992 shall remain in force until they are replaced by regulations issued under this Act.

(7) Executive Order No. 280 of 23 March 2012 on advertising by the contracting authority of public supplies contracts and public services contracts on the central procurement platform shall be repealed.

(8) The Act on restriction of options of debtors to participate in public procurement procedures and on amendment of other specific acts, cf. Executive Order No. 336 of 13 May 1997, shall be repealed.

Part 19

Amendment of other legislation

Section 197. The following amendments shall be made to Act No. 492 of 12 May 2010 on enforcement of the procurement rules, etc. as amended by section 13 of Act No. 1556 of 21 December 2010, section 1 of Act No. 618 of 14 June 2011, section 31 of Act No. 1231 of 18 December 2012 and Act No. 511 of 27 May 2013:

1. The *title* of the Act shall be:

The Act on the Danish Complaints Board for Public Procurement (lov om Klagenævnet for Udbud).

2. "A brief account of the relevant grounds of the decision" shall be amended throughout the Act to: "grounds of the decision".

3. The title of *Section 1* shall be:

"Section 1. The Act shall apply to contracting authorities on conclusion of utility contracts.

(2) Further, the Act shall apply in connection with the enforcement of

- 1) The Public Procurement Act issued under this Act. However, cf. (4),
- 2) European law on conclusion of public contracts and utility contracts (European Union Procurement Rules) and
- 3) the Danish Act on invitation of tenders in the works sector.

(3) Further, the Act shall apply where provisions are stipulated in or according to law on a right to submit a complaint to the Danish Complaints Board for Public Procurement.

(4) the Act shall not apply to complaints of breach of section 1 and 193 of the Public Procurement Act."

4. In *section 2(21)*, "the Procurement Directive or" shall be deleted, and *item 3* shall be revoked. Items 4 and 5 shall become item 3 and 4.

5. In *section 2(2)(1)*, "subsection 1, item 2 and 3" shall be amended to: "subsection 1, item 2".

6. In *section 3(1)*, *section 7(2)*, *section 16*, *section 17(1)* and *section 19(2)*, "the Procurement Directive" shall be amended to: "Title II or III of the Procurement Directive".

7. In *section 3(1)* "or a framework agreement" and "or the framework agreement" shall be deleted.

8. In *section 3(1)(1 and 2)*, "section 2(1)(2 and 3)" shall be amended to: "section 2(1)(2) or section 171(1)(3) of the Public Procurement Act".

9. In *section 3* the following new text shall be inserted:

"(2) A contracting authority may stipulate standstill period longer than the periods stated in (1)."
Subsection 2 shall become subsection 3.

- 10.** In *section 3(2)*, which will become (3), "(1)" shall be amended to: "(1 and 2)".
- 11.** In *section 4(1)(3)*, *section 17(1)(1 and 2)*, *section 17(2)(2)* and *section 19(2)(3 and 4)* the following shall be inserted before "the European procurement rules": " the Public Procurement Act or".
- 12.** In *section 5(1)*, *section 3(1)* shall be amended to: "section 3(1) or (2) or in the period of 10 calendar days stipulated in *section 4(1)(2)* ".
- 13.** The wording of *Section 6(4)* shall be:
"(4) No later than at the time of submission of a complaint to the Danish Complaints Board for Public Procurement, the complainant shall inform the contracting authority in writing that a complaint is submitted to the Danish Complaints Board for Public Procurement and whether the complaint was submitted during the standstill period, cf. *section 3(1) or (2) or in the period of 10 calendar days stipulated in section 4(1)(2)*. In cases where the complaint was not submitted during the periods stated, the complainant shall also state if a stay of proceeding is claimed, cf. *section 12(1)*."
- 14.** The wording of *Section 7(1)* shall be:
"Where the contracting authority has arranged a restricted procedure, a competitive procedure with negotiation, a competitive dialogue or an innovation partnership under the Danish Act on Public Procurement or Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, a complaint by an enterprise of not being selected shall be submitted to the Danish Complaints Board for Public Procurement no later than 20 calendar days after the day following the date notification is sent to the relevant candidates of the selected candidates, cf. *section 171(2) of the the Public Procurement Act or section 2(1)(1) of this Act* where such notification is accompanied by the grounds of the decision."
- 15.** In *section 7(2)*, the following shall be inserted after "procurement procedure": "or decisions".
- 16.** In *section 7(2)(3)*, *section 2(2)* shall be amended to: "section 2(2) or *section 171(4) of the Public Procurement Act*".
- 17.** In *section 7(2)*, the following shall be inserted as *item 4*:
"4) 20 calendar days calculated from the day after the contracting authority has communicated its decision, cf. *section 185(2)(2) the Public Procurement Act*".
- 18.** In *section 7(4) and (5)*, "Act on invitation of tenders for certain public and publicly funded contracts" shall be amended to: "Act on invitation of tenders in the works sector or *sections 191 and 192 of the Public Procurement Act*".
- 19.** In *section 12(2)(1)*, "section 3(1)" shall be amended to: "section 3(1) or (2) or in the period of 10 calendar days stipulated in *section 4(1)(2)*".
- 20.** After *section 14*, the following shall be inserted:
"**Section 14 a.** If a claim is made in a complaint case for cancellation of an award decision, the Danish Complaints Board for Public Procurement may make a non-binding preliminary statement to the effect that special conditions apply which warrant the continuation of the contract following a claim from the complainant or the respondent, cf. *section 185(2) of the Public Procurement Act*."
- 21.** In *section 16(1)*, *section 17(1)(2)* and *section 19(2)(1 and 4)*, "section 2(1)" shall be amended to: "section 3(1) and (2)".
- 22.** In *section 17(1)(3 and 4)* and *section 19(2)(5 and 6)*, "the Procurement Directive" shall be amended to:

"Title II or III of the Procurement Directive".

23. In *section 17(2)(1)*, "sections 2 and 3" shall be amended to: "sections 2 and 3 or section 171 of the Public Procurement Act".

Section 198. In the Act on invitation of tenders for certain public and publicly funded contracts, cf. Executive Order No. 1410 of 7 December 2007, as amended by section 2 of Act No. 618 of 14 June and section 1 of Act No. 1234 of 18 December 2012, the following amendments shall be made:

1. The *title* of the Act shall be:

"The Danish Act on invitation of tenders in the works sector".

2. The title of *Title I and III* shall be revoked.

3. In *section 1(1) and (2)*, "Title I of the Act" shall be amended to: "The Act".

4. In *section 1(2)(3)*, "Title I of the Act" shall be amended to: "the Act".

5. In *section 1(3)*, "Title I of the Act" shall be amended to: "the Act".

6. In *section 1(3)(1)*, "the Procurement Directive" shall be amended to: "the Public Procurement Act" and "Article 9(5a) of the Directive" shall be amended to: "section 8 of the Public Procurement Act".

7. In *section 1(3)(2)*, "section 17(6a)" shall be amended to: "Article 16(10)".

8. In *section 1(4)*, "in section I" shall be deleted.

- 9 *The wording of section 1(5)* shall be:

"(5) In accordance with the Public Procurement Act, and the Utilities Directive, works shall be defined as the result of a set of works activities, the purpose of which is to fulfil an economic and technical function of its own. The Utilities Directive shall be defined as Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (the Official Journal of the European Union 2014, No. L 94, p. 243). The term bodies governed by public law shall be defined in accordance with its definition in the Public Procurement Act and the Utility Directive."

10. *Title II* shall be revoked.

Part 20

*The Faroe Islands and
Greenland*

Section 199. This Act shall not apply to the Faroe Islands and Greenland.

¹⁾ This Act includes provisions implementing Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (text relevant to EEA), the Official Journal of the European Union 2014, No. L 94, page 65).