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## **Act No. 120/2016**

### **on Public Procurement**

#### **I. CHAPTER**

##### **Purpose, definitions and scope**

###### Article 1.

###### *Purpose.*

The purpose of this Act is to ensure the equal treatment of economic operators, encourage efficiency in public sector operations through active competition and to promote innovation and development in public procurement of supplies, works and services.

###### Article 2.

###### *Definitions*

The definition of terms in this Act is as follows:

1. *Open procedure*: Procurement procedure in which any economic operator may submit a tender.
2. *Tenderer*: An economic operator who has submitted a tender.
3. *Economic operator*: Generic term used in the interest of simplification and covers equally the concepts of contractor, supplier and service provider, irrespective of legal form.
4. *Dynamic purchasing system*: An electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator that satisfies the selection criteria and has submitted an indicative tender that complies with the specification.
5. *Design contest*: A procedure which enables the 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.
6. *In-house contracts*: Contracts awarded between public bodies, cf. Article 13.
7. *Label requirements*: Means the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned.

8. *Restricted procedure*: A procurement procedure in which any economic operator may request to participate and whereby only those economic operators invited by the contracting authority may submit a tender.
9. *Label*: Means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements.
10. *Central purchasing body*: A contracting authority as defined in Article 3 which acquires supplies or services intended for other contracting authorities, or awards public contracts or concludes framework agreements for works, supplies or services intended for other contracting authorities.
11. *Innovation*: Development of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations inter alia with the purpose of helping to solve societal challenges or to support strategies for sustainable growth
12. *Innovation Partnership*: Procurement procedures which any economic operator may apply for and which entail that the purchaser (contracting authority) leads the negotiation with the economic operators that have been selected to participate in the process, with the objective to develop an innovative product, service or work.
13. *Contracting authority or purchaser*: The State, local authorities, their institutions and organisations and other public entities as specified in Article 3.
14. *Public contracts*: All contracts covered by paragraph 1 of Article 4, including procurement procedures with a design contest and innovative partnership.
15. *Electronic means*: The use of electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means.
16. *Electronic auction*: A repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.
17. *Framework agreement*: An agreement 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, where appropriate, the quantity envisaged.
18. *Written or in writing*: 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.
19. *Competitive procedure with negotiation*: Procurement procedures with negotiation where the contracting authority presents minimum demands at the outset. A procurement procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of adjusting the tender to the contracting party's requirements, and on the basis of which the candidates chosen are invited to tender.

20. *Competitive dialogue*: A procurement procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.
21. *Negotiated procedure*: A procedure wherein by the contracting authority consults the economic operators of their choice and negotiates the terms of contract with one or more of them.
22. *Concession*: A contract for works or services in which the consideration for the provision of works or services consists either solely in the right to exploit the work or the service, or in this right together with payment from the contracting authority.
23. *Directive on the award of concessions*: Directive 2014/23/EC of the European Parliament and of the Council of 26 February 2014 on the (co-ordination of procedures for the) award of concessions (public works contracts, supply contracts and service contracts) as incorporated in the EEA agreement by the EEA Joint Committee Decision
24. *Directive (public procurement directive)* Directive 2014/24/EC of the European Parliament and of the Council of 26 February 2014 on public procurement (the co-ordination of procedures for the award of public works contracts, supply contracts and service contracts) as incorporated in the EEA agreement by the EEA Joint Committee Decision.
25. *Contract notice*: A public call for competition for any type of procurement procedure under this Act.
26. *Procurement documents*: Documentation that the contracting authority submits or refers to, in order to describe or determine elements of the procurement procedure, including notices, technical specifications, explanatory data, the expected contract conditions, forms for the submission of documents by economic operators, information regarding the obligations that generally apply and additional documentation, if any. For the purposes of this Act the word procurement documents is also used for invitations to confirm interest, and the contents of procurement notices.
27. *The Supply Directive*: Directive 2014/25/EU of the European Parliament and the Council on procurement by entities operating in the water, energy, transport and postal services sectors as incorporated in the EEA agreement by the EEA Joint Committee Decision.
28. *Works contracts or public works contracts*: All contracts covered by paragraph 2 of Article 4.
29. *Contractor, supplier and service provider*: Any natural or legal person or public entity or group of such persons and/or bodies which offers on the market the execution of work, supplies and/or services.
30. *Threshold amounts*: Amounts determining when procurements are subject to public tenders. Procurements that exceed national threshold amounts acc. to paragraph 1 of Article 23 must be subject to invitation to tenders nationally. Procurements that exceed the threshold amounts in the European Economic Area acc. to paragraph 4 of Article

23 must be put up for tender throughout the Economic Area. Furthermore the threshold amounts for public tenders differ according to types of procurement.

31. *Life cycle*: Means all consecutive or interlinked stages, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation. This includes research and development, production, trading and its conditions, transport, use and maintenance.
32. *Supply contracts or public supply contracts*: All contracts covered by paragraph 3 of Article 4.
33. *Candidate*: An economic operator that has sought, or been offered an invitation to take part in restricted procedure, competitive procedure with negotiation, negotiated procedure, competitive dialogue, or innovative partnership.
34. *Service contracts or public service contracts*: All contracts covered by paragraph 4 of Article 4.
35. *Mini-tender*: Procurement procedures whereby the contracting authority calls, with reasonable notice, for written tenders among framework agreement parties, who have performed an agreement on the basis of objective criteria that are stated in the framework agreement tender specifications.

### Article 3.

#### *Public authorities within the scope of this Act*

This Act applies to the State, local authorities, their institutions and other public entities, in accordance with paragraph 2. The Act also applies to associations formed by one or more of such authorities.

An entity is considered public if it is governed by public law and if it has been established for the specific purpose of serving the needs of the public interest, provided it does not conduct operations that may be compared to the operations of private entities, such as in the fields of business or industry. Furthermore, at least one of the following should apply:

- a. It is operated mostly at the expense of the State or local authorities, their institutions or other public entities. The entity shall be considered operated mostly at the expense of the State or local authorities, their institutions or other public entities, if public funding exceeds 50% of annual operating costs.
- b. It is supervised by the State or local authorities, their institutions or other public entities.
- c. It is subject to a special board of directors, the majority of which is appointed by the State or local authorities, their institutions or other public entities.

### Article 4.

#### *Contracts governed by the Act*

This Act applies to contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities according to Article 3 and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Act. Such contracts shall always be made in writing.

Work contracts are contracts having as their object either the execution, or both the design and execution of works, or the execution of works, by whatever means corresponding to the requirements specified by the contracting authority. A work in this sense is the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

Public supply contracts are contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of supplies. A contract which also covers, as an incidental matter, siting and installation operations shall be considered to be a supply contract.

Service agreements are contracts having as their object the provision of services, other than that referred to in works contracts, acc. to paragraph 2 of

#### Article 5.

##### *Mixed contracts.*

Contracts which have as their subject-matter two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question

Procurement that is partly linked to social services and other specific services according to Chapter VIII, partly linked to other services, or other mixed procurement, shall be governed by the provisions that apply to that service element of the contract that is considered the more valuable one.

Procurement that is partly linked to the common procurement rules that are set out in this Act, in addition to procurement that is exempt from the scope of application of the Act, or are partly subject to the procurement rules that are set out in regulations, the contracting authority may select to award one single contract, or more independent contracts for each part if differentiation is objectively possible. If the contracting authority decides to award one single contract for procurement then the provisions of this Act shall govern, cf. however what is stated in Article 6. If the contracting authority decides to award individual contracts for each part then the rules that apply to that type of procurement that characterises the main subject of each contract shall govern. A mixed contract that contains simultaneously elements of supply, works and service contracts and of concessions shall be awarded according to this Act provided that the estimated value of that part of the contract that is subject to this Act of law exceeds the threshold amount according to Article 23.

When it is not possible to separate different parts of the contract in an objective manner the rules that apply to that type of procurement that characterises the main subject of the contract shall govern.

#### Article 6.

##### *Mixed contracts in the field of defence issues*

Procurement that is simultaneously subject to the common procurement rules that are set out in this Act and in regulations issued by the Minister concerning procurement in the fields of defence and security matters, the contracting authority may award one single contract for the procurement, or more independent contracts for each part or section if it is possible to separate these in an objective manner. If the contracting authority decides to award an

independent contract for each part then the rules that apply to that type of procurement that characterises the main subject of the contract shall govern.

If part of a specific contract relates to procurement in the field of defence and security a contract may be awarded in accordance with regulations that shall be issued by the Minister in that field provided that the awarding of a single contract is justified for objective reasons. If it is not possible to separate different parts of the contract in an objective manner then procurement shall be done in accordance with regulations issued by the Minister in the field of defence and security.

#### Article 7.

##### *Secret contracts and defence related contracts*

This Act does not apply to public contracts when they are declared to be secret, or when their performance must be accompanied by special security measures according to current legislation or administrative provisions, or when the protection of the essential interests of the State so requires.

The provisions of Chapters XI and XII apply to procurement in the field of defence and security that exceed the threshold amounts of a regulation issued by the Minister regarding procurement in the field of defence and security. Otherwise this Act does not apply to procurement of such type.

The Minister may issue regulations further defining the procurements in the fields of defence and security in accordance with the commitments of the Icelandic State in the field of the public procurement pursuant to the agreement of the European Economic Area and other international treaties. By way of regulation further provisions may be issued regarding which procurements shall be subject to the Act, threshold amounts, procurement procedures, procurement documents, selection of candidates and the performance of the contract for such procurement.

#### Article 8.

##### *Contracts made on the basis of international agreements*

This Act does not apply to public contracts governed by different procedural rules concerning public procurement made pursuant to an international agreement between the Icelandic State and one or more states not in the European Economic Area or the original member states of the European Free Trade Association and covering the procurement of supplies, works or services intended for the joint implementation or exploitation of a work for the states, provided that such contract is notified to the EFTA Surveillance Authority.

This Act does not apply to concluded contracts based on international agreements relating to the stationing of troops and concerning economic operators domiciled in the European Economic Area or in other states.

This Act does not apply to contracts that a contracting authority concludes in accordance with procurement procedures that are provided for by an international agency or an international financial institution, if such an institution is financing in whole the relevant contracts. In the case of contracts that are financed for the most part by an international agency or an international financial institution, the parties shall agree to the relevant procurement procedures.

#### Article 9.

##### *Contracts of institutions in charge of water, energy, transport and postal services.*

The provisions of Chapters XI and XII apply to the procurement of entities in charge of water, energy, transport and postal services that exceed the threshold amounts of the regulation issued by the Minister for procurements in this field. Otherwise this Act does not cover such procurements if contracts are awarded on account of water suppliers, energy suppliers, transport and postal services.

The Minister shall issue regulations further defining the procurements of the entities in charge of water, energy, transport and postal services in accordance with the commitments of the Icelandic State in the field of the public procurement pursuant to the agreement of the European Economic Area and other international treaties. Regulations that are to be issued shall provide further details concerning which operations and services shall be subject to the Act, the scope of application, threshold amounts, procurement procedures, procurement documents, selection of candidate and the performance of a contract for such procurement.

#### Article 10.

##### *Specifically excluded contracts concerning electronic communication*

This Act does not apply to public contracts that have the principal purpose of establishing or operating public telecommunications networks, to utilise such networks, or to provide to the public one or more telecommunications services.

#### Article 11.

##### *Contracts specifically excluded from the scope of this Act*

This Act does not apply to service contracts for:

- a. The acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon.
- b. The acquisition, development, production or co-production of programme material intended for radio or television, and contracts for broadcasting time.
- c. Arbitration and conciliation processes.
- d. The representation of an advocate on behalf of his client, or settlement proceedings before public institutions, courts of law or before an arbitral tribunal, or before other international courts or agencies.
- e. Legal consultation is provided during the preparation of proceedings, acc. to sub-paragraph-d.
- f. Legal services that a trustee, or that a court appointed representative, or one appointed under the supervision of a court of law, provide according to law.
- g. The certification of documents and authentication services provided by a notary public.
- h. Other legal services that are connected with the application of government power.
- i. Financial services in connection with the issue, sale, purchase or transfer of securities or other similar financial instruments.
- j. Loans whether they are or are not connected with the issue, sale, purchase or transfer of securities or other financial instruments.
- k. Contracts of employment.

- l. Civil protection and other danger prevention services provided by agencies or non-profit organisations, with the exception of ambulance services.
- m. Passenger rail transport or by underground metro.
- n. Services provided to a political party during a political campaign.
- o. Research and development of services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority.

The Minister of Finance may decide, through regulations, that institutions and companies of the State shall conduct their procurements in accordance with this Act and in the awarding of the contracts specified in paragraph 1. It may at the same time also be permitted by regulation to further define services acc. paragraph 1 by referring to a common procurement glossary.

#### Article 12.

##### *Contracts awarded on the basis of an exclusive right, or concession.*

This Act does not apply to public service contracts awarded to entities or the legal person of economic operators which themselves are considered contracting authorities or on the basis of an exclusive right which they enjoy pursuant to published law, regulation or administrative provision which is compatible with the provisions of the European Economic Area agreement.

The provisions of Chapters XI and XII apply to public concessions that exceed the threshold amounts of regulations issued by the minister on the awarding of concessions. Otherwise this Act does not cover such contracts.

The Minister shall issue regulations providing for the awarding of concession contracts in conformity with the commitments of the Icelandic State pursuant to the agreement of the European Economic Area and other international treaties. Regulations shall i.a. provide in more detail for the scope of activity, the principles for awarding and performing concessions and on threshold amounts for such concessions.

#### Article 13.

##### *Public contracts between entities within the public sector*

This Act does not cover contracts that are awarded to public legal persons if the following conditions are fulfilled:

- a. The controlled legal person is under the control of a contracting authority, or under the joint control of more than one contracting authority.
- b. More than 80 % of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority.
- c. There is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions which do not exert a decisive influence on the controlled legal person.



A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of sub-paragraph-a of paragraph 1 where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person. Furthermore, a controlled legal person is considered to be under the joint control of contracting authorities according to sub-paragraph-a of paragraph 1 if the following conditions are present:

- a. The controlled legal person is governed by as special governing board where the positions are occupied by contracting authorities.
- b. Contracting authorities can jointly have decision making powers both where they exercise a decisive influence over both strategic objectives and significant decisions of the controlled legal person in question.
- c. The controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities

A contract concluded exclusively between two or more contracting authorities shall fall outside the scope of this Directive where all of the following conditions are fulfilled:

- a. The contract establishes or implements a cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common
- b. That the cooperation of these entities concerns the public interest.
- c. The participating contracting authorities perform on the open market less than 20 % of the activities concerned by the cooperation.

For the determination of the percentage of activities referred to in according to sub-paragraph-b of paragraph 1 and sub-paragraph-c of paragraph 3 the average total turnover, or an appropriate alternative activity-based measure such as costs incurred by the relevant legal person or contracting authority with respect to services, supplies and works for the three years preceding the contract award shall be taken into consideration. If the necessary data is not available the criterion for the activity shall be assessed based on business plans, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

#### Article 14.

##### *Subsidised contracts*

The provisions of this Act shall apply to the awarding of works contracts that exceed the threshold amounts according to paragraph 4 of Article 23, net of VAT, which are subsidised by the contracting authorities by more than 50% in the case of contracts for civil engineering activities, construction work, supplies and services, and also when a contract involves building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes.

In the case of a service contract exceeding the threshold amounts pursuant to paragraph 4 of Article 23, net of VAT, which are subsidised by contracting authorities by more than 50 % and which is connected to a work contract that is covered by paragraph 1 the provisions of

this Act shall also apply.

The respective contracting authority shall ensure compliance with this Act where they do not themselves award the contract that comes under paragraphs 1 or 2. The same applies if a contracting authority awards a contract on behalf of such an entity or is responsible for the awarding of the contract.

## **II. CHAPTER General provisions**

### Article 15.

#### *Principles of procurement*

Equal treatment, proportionality and transparency must be maintained in public procurement. Economic operators may not be discriminated against on grounds of nationality and neither is any unreasonable restricting of competition allowed. Proper measures must be taken in order to prevent conflict of interest in the procurement process in order to ensure equal treatment.

Stipulating in procurement documents that supply is to be delivered, service given or work carried out at a specified location is not considered to be discriminatory, provided that such a stipulation is based on legitimate arguments.

### Article 16.

#### *Principles regarding those who have rights according to this Act*

An economic operator established in one of the states of the European Economic Area, or in one of the original member states of the European Free Trade Association, shall have the rights stated in this Act. However, those economic operators shall never have rights that are inferior to those of economic operators from other states. Economic operators from other states also have rights according to this Act in so far as they shall have rights based on any international agreements to which the Icelandic State is a party.

### Article 17.

#### *Confidentiality*

The contracting authority may not disclose sensitive information forwarded to it by economic operators which they have designated as confidential. Included in such information is considered information about operations, specific technical solutions, unit price, financial matters and business matters, and other such information that can harm the interests of the economic operator if access is given to that information.

A contracting authority may demand that an economic operator maintain confidentiality regarding important information that is provided during the procurement process.

The provisions of paragraph 1 do not apply if otherwise provided for in this Act, in particular concerning obligations relating to the advertising of awarded contracts in the European Economic Area as set out in Article 84 of the Directive, and to informing candidates and tenderers of particular issues as set out in Article 85, as well as the obligation to provide information to the Public Procurements Complaints Commission according to paragraph 4 of Article 108.

Paragraph 1 does not otherwise affect the obligation of a public contracting authority to present information as required by the Information Act.

## Article 18.

### *Reserved contracts for certain services*

Contracting authorities may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons. At the same time they may provide for such contracts to be performed in the context of sheltered employment programmes.

The condition for such reservation according to paragraph 1, is that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

If the procurement exceeds the threshold amounts according to Article 23 then that provision must be referred to in the contract notice.

## Article 19.

### *Joint procurement*

Contracting authorities may agree to perform certain specific procurements jointly in accordance with this Act.

When a contracting authority handles the procurement on his own behalf and on behalf of other contracting authorities, of contracting authorities participate in joint procurement procedures they become jointly responsible for fulfilling their obligations according to this Act.

Each contracting authority is responsible for fulfilling his responsibilities according to this Act, with respect to an agreement that has been made on his behalf during joint procurement procedures, and with respect to the part that he enters into in his own name.

The Minister may by regulation prescribe that government agencies are obligated to join up for specific procurement activities.

## Article 20.

### *Procurement in another state within the European Economic Area*

The contracting authority may use centralised purchasing activities in another state within the EEA in order to put up for tender the procurement of supplies or services that are subject to this Act. The State Trading Centre may also put up for tender procurement that is subject to this Act in another state within the EEA, in cooperation with foreign contracting parties, their associations or representatives, or centralised procurement agencies.

The Competition Authority must be notified of the planned procurement including argumentation for the application of authority according to paragraph 1 of Accompanying the argumentation there must be a competition assessment in accordance with the instructions from the State Trading Centre. The Competition Authority shall provide its opinion of the assessment and thereby take a position as to whether the tender is likely to disrupt competition in the domestic market. The opinion does not have an impact on the tender procedure. The contracting authority can close down a tender irrespective of the conclusion of the Competition Authority. If so requested a copy of a contract must be delivered following a tender.

Procurement that is based on this provision is subject to the regulations of the pertinent state, including regulations concerning complaints, the validity of the procurement decisions and damages.

## Article 21.

### *Common procurement vocabulary*

All references to classification systems in connection with public procurement that exceed threshold amounts for the EEA, acc. to paragraph 4 of Article 23, shall be based on the common procurement vocabulary (CPV).

## Article 22.

### *Rules applicable to communication and submission of documents*

All communication and information exchange referred to in this Article shall in general be conducted through electronic means. The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be commonly available and interoperable with the information and communication technology products in general use. The equipment may not be of a type that could lead to inequality between economic operators, or would limit the access of a company to the procurement procedure.

Notwithstanding the provisions of paragraph 1 the contracting authority is not obligated to demand that electronic means be used for the submission of data under the following circumstances:

- a. if the use of electronic means would, because of the specialised nature of the procurement, require special equipment, device or file formats that are not generally accessible, or programmes, that are generally accessible, do not support,
- b. if the programmes that support the file formats that are compatible for the description of tenders, use file formats that other open, or generally accessible programmes are unable to handle, or are dependent upon patented licensing and it is not possible to make them accessible for download, or remote use by contracting authority,
- c. if the use of electronic methods would require specialised office equipment that the buyer generally does not have access to.
- d. if the procurement documents require that models be submitted that it is not possible to transmit through electronic means.
- e. if the use of other communication methods is possible, either due to security breach in electronic communication methods, or to protect in particular sensitive information.

If electronic methods are not used for communication the communication must be conducted by post, or by other appropriate medium.

It is permitted, notwithstanding the provisions of paragraphs 1-3, to have oral communication, outside of the most important aspects of the procurement procedures, if the communication is recorded in a satisfactory manner. The most important aspects of the procurement procedures will according to this view cover the procurement documents, requests to participate, confirmation of interest and tenders. Oral communication with the tenderers, that may have significant effect on the content and assessment of tenders, shall be registered in the appropriate manner, e.g. by written reports, audio reports, or by excerpts from the principal points of the communication.

Communication, transmission and storage of information shall be conducted in such a manner that the origin of the documents is ensured and that the documents have not been altered. Additionally, the confidentiality of tenders and requests to participate must be ensured, and the contracting authorities may examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

In the case of public works contracts and design contests it is permissible to demand the use of special electronic equipment. In such instances the contracting authorities shall offer other types of access, such as provided for in paragraph 7, until such equipment becomes generally accessible in the meaning of paragraph 1.

The contracting authority can, if necessary, demand that tools and equipment that is not generally accessible be used. The condition is that the contracting authority offer other type of option for access in the following manner:

- a. full, unrestricted and direct access, free of charge by electronic means to such tools and equipment from the date of notice, or from the date when invitation to confirm interest is sent; the text of the notice or the invitation to confirm interest must state the e-mail address where you can get access to these tools and equipment,
- b. a guarantee that a tenderer, who does not have access to the relevant tools and equipment, or who has no possibility to obtain access to these within the specific time limit, can have access to the procurement procedure by the temporary use of the access tools to be had free of charge, provided that the lack of access can not be tracked to the relevant tenderer, or
- c. by the obtainment of other type of route to submit a tender by electronic methods.

The following rules shall be generally applicable to devices for the electronic transmission and receipt of tenders and requests to participate:

- a. information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to all interested parties.
- b. the security level for electronic communication methods shall be specified, as may be applicable, during the various stages of a particular procurement procedure, and this shall be in the proper proportion to the risk that is involved,
- c. when a demand for a fully valid electronic signature is made, the contracting authority shall receive implemented electronic signatures, that are supported by a fully valid certificate, that is issued by an electronic signature certification service that is specified on trusted lists; the contracting authority shall support the formats that use advanced electronic signatures, and make the necessary technical arrangements to receive signatures; when a tender is signed with the support of a valid certificate that is listed on a trusted list, further additional requirements may not be made, that might prevent the use by the tenderer of such signatures.

### **III. CHAPTER** **Threshold amounts**

#### **Article 23.**

#### *Threshold amounts*

Any public procurement of supplies and services exceeding ISK 15,500,000 and procurement of works exceeding ISK 49,000,000 shall be put up for tender and made in accordance with the procurement procedures stipulated in Chapter IV. Threshold amounts for procurement of public service contracts relating to social services and other specialised

services according to Chapter VIII shall comply with paragraph 4.

Amounts according to paragraph 1 may be revised every other year in accordance with changes to the consumer price index, the first revision taking effect on 1 January 2018. These amounts may be rounded up to the next thousand. The Minister shall, with appropriate advance notice, make public and official the changes to be made to the threshold amounts according to the present Article.

The Minister may by issuing regulations provide for lower threshold amounts according to paragraph 1 in relation to procurements by public entities, with the exception of local communities, their agencies, other public bodies operated by them, or associations that these parties may have established.

The Minister shall publish threshold amounts for public procurement within the European Economic Area nominated in ISK through regulations in accordance with the commitments made by the Icelandic state according to the EEA agreement. The threshold amounts shall be revised every two years, for the first time on 1 January 2018.

#### Article 24.

##### *Procurement below domestic threshold amounts*

When procurement is below the threshold amount as specified pursuant to paragraph 1 of Article 23, the contracting authority must at all times ensure efficiency and make comparisons between as many economic operators as possible. Such comparisons must as a rule be made through electronic means. These procurements shall take aspects of competition into consideration and be made in compliance with the equality provisions of Article 15 and with Article 49 on technical specifications.

#### Article 25.

##### *Calculating the value of contracts*

The calculation of the estimated value of a contract shall be based on the total amount that the contracting authority will pay for the procurement, net of VAT. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract, as clearly stipulated in the procurement documents.

If the contracting authority intends to offer the tenderers or the candidates money prizes, or other extra payment it must be taken into account when calculating the estimated value of the contract.

This estimate must be valid at the moment at which the contract notice is sent for publication or, in cases where such notice is not required, at the moment at which the contracting authority commences the procurement procedure.

No works project or purchase of supplies and/or services may be subdivided in order to bring a procurement below the threshold amounts, unless this is justifiable on objective grounds.

When a contracting authority is subdivided into separate organisational units the estimated total amount of the procurements by all the units must be taken into account. If an organisational unit is independently responsible for its procurement, or specific types of the procurements, their value may be estimated irrespective of the total procurement.

#### Article 26.

##### *Calculating the value of work contracts*

When calculating the estimated value of a work contract the calculations shall be based on the costs of the work in addition to the estimated total value of supplies and services that the contracting authority provides the economic operator with, provided that this is necessary for the execution of the work.

#### Article 27.

##### *Calculating the value of supply contracts*

The estimation of the value of a supply contract shall include the cost of transporting the supplies in the price of the supplies. If supplies are purchased "free on board" (fob) in a foreign port, however, transport shall not be included in the supply price.

In the case of contracts for the lease, rental or hire purchase of supplies, the basis for calculating the estimated contract value shall be:

- a. When the term of the contract is less than or equal to 12 months, the total estimated value for the term of the contract shall be used as basis for contract value. When the term of the contract is greater than 12 months, the total value including the estimated residual value of the supplies shall be used at the end of the term.
- b. In the case of a contract without a fixed term or the term of which cannot be defined, the estimated value shall be based on the monthly value multiplied by 48.

#### Article 28.

##### *Calculating the value of service contracts*

Where insurance services are concerned, the value to be taken as a basis for estimating the value of a contract shall be the premium payable and other forms of remuneration. Where banking and financial services are concerned, the value to be taken as a basis for estimating the value of a contract shall be based on the fees, commissions and interest in addition to other forms of remuneration. When a contract involves design, the value to be taken as a basis for estimating the value of a contract shall be based on the fees, commission payable and other forms of remuneration.

When a contract does not indicate a total price, the basis for calculating the estimated contract value shall be:

- a. For a contract with a term of 48 months or less, the value to be taken as a basis for estimating the value of a contract shall be based on the estimated contract value for its duration.
- b. In the case of a contract without a fixed term or the term of which cannot be defined, the estimated value shall be based on the monthly value multiplied by 48.

#### Article 29.

##### *Subdivided procurements*

Where a procurement of work or services is subdivided, resulting in several separate contracts, account shall be taken of the total estimated value of all such lots. The same applies when procurements of supplies of the same type are subdivided into several separate

contracts. Where the aggregate value of the contracts exceeds the threshold amount, the value of each separate contract shall be regarded as exceeding the threshold.

When the aggregate value of contracts as specified in paragraph 1 exceeds the threshold amount, individual contracts may be made for up to 20% of the aggregate value of the contracts without putting them out to tender.

#### Article 30.

##### *Calculating the value of ongoing or renewable supply and service contracts*

In the case of contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on the following:

- a. Either with reference to the total actual value of similar contracts awarded during the preceding 12 months or financial year, adjusted to take account of the changes in quantity or the value over the next 12 months;
- b. Or with reference to the estimated cost during the next twelve months, or a greater period if applicable, from the first delivery of the supplies or services.

The choice of method used to calculate the estimated value of a public contract may not be made with the intention of circumventing the requirement to put it out to tender.

#### Article 31.

##### *Calculating the value of framework agreements and dynamic purchasing systems*

With regard to framework agreements, or dynamic purchasing systems, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system.

#### Article 32.

##### *Calculating the value of innovative partnerships*

In the case of innovative partnerships the estimated value shall be calculated based on the total value of research and development activities, net of VAT during all stages of the intended partnership, in addition to supplies, services or works that are going to be developed and purchased at the end of the partnership.

## **IV. CHAPTER**

### **Procurement procedures**

#### Article 33.

##### *Principles for selecting the procurement procedure*

Procurement above threshold amounts according to paragraphs 1 and 4 of Article 23 shall be made on the basis of an open or restricted procedure according to further details in the rules of V., VI. and VII. chapter. It is also permitted to offer an invitation to an innovative partnership according to Article 38, and procurements are also permitted based on framework agreements according to Article 40, and on dynamic purchasing systems according to Article 41.



Notwithstanding the provisions of paragraph 1, competitive procedure and competitive dialogue is permitted in the following instances, regardless of whether it is a work, supply or service contract:

- a. When it is not possible to meet the needs of the contracting authority without adjusting the solutions that are available.
- b. When procurement includes design or innovation.
- c. When a contract can not be awarded without prior negotiations because of the complexity, risk or specialised the contract is. A contract is considered to be particularly complex when it is not possible in an objective way to define the technical features that can satisfy the needs or objectives of the contracting authority, or if the contracting authority can not define the legal or financial structure of a construction.
- d. When the contracting authority can not define the technical descriptions in sufficient detail by reference to a standard, the European Technical Assessments, common technical specifications or technical guidelines.
- e. When only invalid tenders are received, or tenders that do not meet the conditions of the procurement procedures in an open or restricted procedure. Under such circumstances the contracting authority does not need to issue an open notice, if the procedure covers all tenderers who meet the criteria for qualitative selection that is presented in Articles 68 -77, and who submitted a tender during the original tendering process, in accordance with the formal requirements of the procurement procedures.

Procurement procedures according to paragraphs 1 and 2 must be advertised through contract notice in accordance with Article 55 and as the case may be Article 56.

Notwithstanding paragraphs 1-3 it is permitted to commence negotiated procedure without a prior publication of a contract notice but only under the conditions set forth in Article 39.

#### Article 34.

##### *Open procedure*

In an open procedure all economic operators may submit a tender following a contract notice. Accompanying the tender must be information for the qualitative selection which the contracting authority has requested in an advertisement or in the procurement documents.

#### Article 35.

##### *Restricted procedure*

In a restricted procedure the economic operators can apply for permission to participate in a procurement procedure following a contract notice by submitting information concerning a qualitative selection which the contracting authority has requested in a notice or in the procurement documents. Buyer may by pre-selection limit the number of competent participants who are invited to participate in the procedure in accordance with Article 78. Only the economic operators whom the contracting authority invites to participate, after having assessed the submitted information, may submit a tender in a restricted procedure.

#### Article 36.

##### *Competitive procedure with negotiation*

Under the Competitive Procedure with Negotiation, any economic operator may request to participate in a procurement procedure following a contract notice by submitting information for a qualitative selection that the contracting authority requests in a notice or in the procurement documents. Buyer may by pre-selection limit the number of competent participants who are invited to participate in the procedure in accordance with Article 78. Only the economic operators that the contracting authority invites to participate, after having evaluated the information presented may submit a tender in a competitive procedure that shall be the basis for continuing negotiations.

In the procurement documents, contracting authorities shall identify the subject-matter of the procurement by providing a description of their needs and the characteristics required for the supplies, works or services to be procured. They shall also indicate which elements of the description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

Contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, in the meaning of paragraph 6, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations. The contracting authority may however accept the original tender without negotiation if it reserved the right to do this in the contract notice or in an invitation to confirm interest.

During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. The contracting authorities shall inform all tenderers, whose tenders have not been eliminated pursuant to paragraph 5, in writing of any changes to the technical specifications or other procurement documents. Following these changes, contracting authorities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate. Contracting authorities may not reveal to the other participants any solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his/her agreement.

Contracting authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of participants. Such reduction shall be based on the award criteria in the contract notice, in the invitation to confirm interest, or in other procurement documents. It must be indicated in the publication or in the procurement documents which method will be used.

When the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders. The contracting authority shall verify that the final tenders are in conformity with the minimum requirements and that they comply with paragraph 1 of Article 66. The contracting authority shall assess the final tenders on the basis of the award criteria and award the contract in accordance with paragraph 5 of Article 78, and Article 79-81.

#### Article 37.

##### *Competitive dialogue*

In competitive dialogues, any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority through publication or procurement documents. Buyer may by pre-selection limit the number of competent participants who are invited to participate in the procedure in accordance with Article 78. Only those economic operators invited by the contracting authority through a pre-selection process, following the assessment of the

information provided, may participate in the competitive dialogue. The award criteria for competitive dialogue should be based on the best price-quality ratio in accordance with subparagraph-3 of paragraph 1 of Article 79.

The contract notice should set out the needs and requirements of the contracting authority, which it shall define in that notice or in the procurement documents. At the same time and in the same documents, they shall also set out and define the chosen award criteria and set out an indicative time-frame.

Contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Article 78, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the contract with the chosen candidates during this dialogue.

During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. Contracting authorities may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his/her agreement.

Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage. Such reduction of the number of solutions shall be based on the award criteria in the contract notice or the procurement documents. The contract notice or the procurement documents shall indicate that recourse may be had to this option.

The contracting authority shall continue the dialogue until it has demarcated the solution, or the solutions that will meet its needs.

Having declared that the dialogue is concluded and having so informed the participants, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project. The participants shall be permitted to clarify, specify and fine-tune their tenders at the request of the contracting authority. However, such clarification, specification, fine-tuning or additional information may not involve changes to the basic features of the tender or the call for tender, variations in which are likely to distort competition or have a discriminatory effect.

Contracting authorities shall assess the tenders received on the basis of the award criteria laid down in the original contract notice or in the procurement documents. The contracting authority may continue negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with Article 79, in order to confirm financial commitments contained in the tender, provided this does not have the effect of materially modifying essential aspects of the tender or the contract notice so it does not risk distorting competition or causing discrimination.

The contracting authorities may specify prices or payments to the participants in the dialogue.

## Article 38.

### *Innovative partnership*

In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority in the contract notice or in the procurement documents. Buyer may by pre-selection limit the number of competent participants who are invited to participate in the procedure in accordance with Article 78. Only the economic operators which the contracting operator invites to participate after having evaluated the submitted

information can participate in the partnership. The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities. The contracts shall be awarded on the sole basis of the award criteria of the best price-quality ratio in accordance with sub-paragraph 3 of paragraph 1 of Article 79.

In the procurement documents, the contracting authority shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all tenders as well as set down conditions that apply to intellectual property rights. The information provided in the procurement documents shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the participants. The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments. Based on those targets, the contracting authority may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting authority has indicated in the procurement documents those possibilities and the conditions for their use.

The contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve the content thereof and adjust it to the needs of the contracting authority. The minimum requirements and the award criteria shall not be subject to negotiations.

During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. They shall inform all tenderers whose tenders have not been eliminated, pursuant to paragraph 6, in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements. Following these changes, contracting authorities shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate. Contracting authorities may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his/her agreement.

Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of participants. Such reduction shall be based on the award criteria in the contract notice, in the invitation to confirm interest, or in other procurement documents. The contract notice or the procurement documents shall indicate that recourse may be had to this option.

In selecting candidates, contracting authorities shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions. In the case of an innovation partnership with several partners, the contracting authority may not reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement.

The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution. The estimated value of supplies, services or works shall not be disproportionate in relation to the investment required for their development.

#### Article 39.

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

Contracting authorities may award contracts by a negotiated procedure without prior publication of a contract notice in the following cases, regardless of whether it is a work, supply or service contract:

- a. When no tenders or no suitable tenders, no applications, or no valid applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered.
- b. When only one economic operator is being considered for artistic reasons, the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance, competition is absent for technical reasons or for reasons connected with the protection of exclusive rights.
- c. When a procurement is strictly necessary for reasons of extreme urgency brought about by unforeseen events and the time limit for the open, restricted or negotiated procedures cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

In the case of supplies procurement, contracting authorities may award contracts by a negotiated procedure without prior publication of a contract notice in the following cases:

- a. 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.
- b. In the case of additional deliveries 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. The length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years.
- c. When the supplies are quoted and purchased on a commodity market.
- d. For the purchase of supplies on particularly advantageous terms, either from a supplier which is definitively winding up its business activities or from the receivers or liquidators of a bankruptcy, or a supplier in moratorium, or in composition..

In the case of services procurement, contracting authorities may award contracts by negotiated procedure without prior publication of a contract notice when the contract

concerned follows a design contest and must, under applicable rules for, be awarded to the successful candidate or to one or more of the successful candidates. In the latter case, all successful candidates shall be invited to participate in the negotiations.

In the case of services procurement, contracting authorities may award contracts by a negotiated procedure without prior publication of a contract notice when new works or services consisting in the repetition of similar works or services are entrusted to the economic operator to whom the same contracting authorities awarded the initial contract, provided that such works or services are in conformity with the original project for which the initial contract was awarded. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply the provisions of CHAPTER III This procedure may be used only during the three years following the conclusion of the original contract.

#### Article 40.

##### *Framework agreements*

Framework agreements shall be concluded in accordance with the procedures laid down in this Act. A framework agreement is an agreement 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. The term of a framework agreement may not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

The parties to the framework agreement shall be selected by applying the award criteria set in accordance with Article 79. A framework agreement may state that contracting authorities are not bound to trade solely with parties to the framework agreement on the purchases specified in the agreement, provided that those deviations are specified in the procurement documents.

Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in paragraphs 4 and 5. Those procedures may be applied only between the contracting authorities and the economic operators originally party to the framework agreement. When awarding contracts based on a framework agreement, the parties may under no circumstances make substantial amendments to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 4 of

Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. For the award of those contracts, contracting authorities may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

Where a framework agreement is concluded with more than one economic operators, and all the terms of a framework agreement are decided, and objective criteria to determine qualitative selection of a framework agreement holder are available in the procurement documents for the framework agreement, it is permitted to make individual contracts with the framework agreement holder in accordance with the provisions of the framework agreement. If the terms laid down in a framework agreement are in any way undecided, the parties to the framework agreement may submit mini-tenders, as appropriate, based on more precisely formulated technical requirements, in accordance with the following procedures:

- a. For every contract to be awarded, contracting authorities shall consult, in writing, the economic operators capable of performing the contract.

- b. Contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders.
- c. Tenders shall be submitted in writing, and their content shall remain closed until the stipulated time limit for reply has expired.
- d. Contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

#### Article 41.

##### *Dynamic purchasing systems*

Procurement through a dynamic purchasing system shall be implemented in restricted procedure in accordance with the rules that apply to such tendering process. The provisions of paragraphs 1–3 of Article 59 shall apply for the deadlines for submitting requests to participate in a dynamic purchasing system. All the tenderers satisfying the requirements of Chapter VII shall have the right to membership in a dynamic purchasing system. When a dynamic purchasing system is established, contracting authorities shall use solely electronic means in accordance with Article 22 .

It is permitted under a dynamic purchasing system to indicate any division into categories of products, works or services that are objectively identified based on the characteristics of procurement within the relevant category; Where the dynamic purchasing system has been divided into categories, the applicable award criteria for each category shall be specified.

When procurement is made through the dynamic purchasing system the contracting authority shall:

- a. Publish a contract notice making it clear that a dynamic purchasing system is involved.
- b. Indicate in the specification, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.
- c. Indicate any division into categories of products, works or services and the characteristics defining them;
- d. Offer by electronic means, on publication of the notice and up to the expiry of the system, unrestricted, direct and full access to the specification and to any additional documents. The contracting authority shall indicate in the notice the Internet address at which such documents may be consulted.

Contracting authorities shall give any economic operator, throughout the entire period of the dynamic purchasing system, the possibility of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraph 1. The contracting authority shall take a decision whether a request for participation meets the requirements within a period of ten days from its receipt. It is however permitted to extend the deadline for a period of 15 days in special reasoned cases. It is also permitted to extend this deadline provided that no tender is received in the meantime. The contracting authority must specify

the period of the extended deadline in the procurement documents. The contracting authority shall inform economic operators as soon as possible of whether it has obtained access to the purchasing system or not.

Contracting authorities shall invite all tenderers admitted to the dynamic purchasing system to submit a tender for each specific contract to be awarded under the system. Where the purchasing system has been divided into categories of works, products or services, contracting authorities shall invite all economic operators having been admitted to the category corresponding to the specific procurement concerned to submit a tender. At least ten calendar days shall be given to submit a tender. Contracting authorities shall award the contract to the tenderer which submitted the best tender on the basis of the award criteria set out in the contract notice in the dynamic purchasing system. Those criteria may be formulated more precisely in the invitation to submit a tender.

Contracting authorities may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated self-declaration, cf. paragraph 1 of Article 73, within five working days from the date on which that request is transmitted.

Contracting authorities shall indicate the period of validity of the dynamic purchasing system in the call for competition. No charges may be collected for applications to the system or from parties to the system.

#### Article 42.

##### *Use of electronic auctions*

Contracting authorities are permitted to make procurements by means of electronic auctions according to the following provisions of this Article.

In open or restricted procedures or competitive procedures with negotiation, the contracting authorities may decide that the award of a public contract shall be made through electronic auction when the content of the procurement documents, in particular the technical specifications, can be established with precision. When the same conditions are met, an electronic auction may be held among the parties to a framework agreement as provided for in paragraph 5 of Article 40 and during competitions for contracts to be awarded under the dynamic purchasing system referred to in Article 41. An electronic auction shall be based on:

1. either solely on prices, when the contract is to be awarded to the lowest price, or
2. prices and/or on the new values of the features of the tenders indicated in the procurement documents where the contract is awarded on the basis of the best price-quality ratio.

A contracting authority which decides to hold an electronic auction shall state that fact in the contract notice, or in an invitation to confirm interest.

Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them. All tenderers who have submitted valid tenders shall at the same time be invited to participate in an electronic auction. The invitation to tenderers shall contain all relevant information concerning how the respective tenderer connects to the electronic auction system being used along with information about the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which notifications were sent to economic operators.



When the contract is to be awarded on the basis of the most economically advantageous tender, the notification to the tenderer shall be accompanied by the outcome of a full evaluation of the tender, carried out in accordance with Article 79. The notification shall also state the mathematical formula to be used in the electronic auction to automatically renew rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract notice or in the tender specifications. Any weighting ranges for assessing values that have been indicated in the contract notice or in the tender specifications shall be reduced to a specified value. Where variants are authorised, a separate formula shall be provided for each permitted variant.

Throughout each phase of an electronic auction, the contracting authorities shall provide all tenderers with sufficient information to enable them to ascertain their relative rankings at any moment. Contracting authorities may also communicate other information to tenderers concerning other prices or values submitted, provided that that is stated in the tender specifications. Contracting authorities may also announce the number of participants in that phase of the auction. In no case, however, may contracting authorities disclose the identities of the tenderers during any phase of an electronic auction.

Contracting authorities shall close an electronic auction in one or more of the following manners:

- a. By specifying in advance the fixed date and time for the closure of an auction in the notice.
- b. When they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, a notice shall state the time that will be allowed to elapse after receiving the last submission until the close of the electronic auction.
- c. When the number of phases in the auction, fixed in the invitation, has been completed.

When a contracting authority decides to close an electronic auction in accordance with Item c, of paragraph 7 possibly in combination with the arrangements laid down in Item b, of paragraph 7 the invitation in which the tenderer was invited to take part in the auction shall indicate the timetable for each phase of the auction.

After closing an electronic auction, the contracting authority shall award the contract to the most economically advantageous tender on the basis of the results of the electronic auction in accordance with Article 79.

#### Article 43.

##### *Electronic catalogues*

Where the use of electronic means of communication is required in a procurement procedure, contracting authorities may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue. Electronic catalogues shall be established by economic operators with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting authority. Furthermore, electronic catalogues shall comply with the requirements for electronic communication tools as well as with any additional requirements set by the contracting authority in accordance with Article 22.

Where the presentation of tenders in the form of electronic catalogues is required, contracting authorities shall state so in the contract notice or in the invitation to confirm

interest. Also indicate in the tender specifications all the necessary information pursuant to paragraph 8 of Article 22, about the format, the electronic equipment used and the technical connection arrangements and specifications.

Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of electronic catalogues, contracting authorities may submit mini-tenders between framework agreement parties for specific contracts on the basis of updated catalogues. In such mini-tender, contracting authorities shall use either of the following methods:

- a. invite economic operators to resubmit their electronic catalogues, adapted to the requirements of the contract in question, or
- b. notify economic operators that they intend to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the contract in question; provided that the use of that method has been announced in the tender specification for the framework agreement.

When a mini-tender is held for particular contracts, cf. item-b of paragraph 3, they shall notify the economic operators of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question. The tenderers shall be given the possibility to refuse such collection of information. Contracting authorities shall allow for an adequate period between the notification and the actual collection of information. Before awarding the contract, contracting authorities shall present the collected information to the tenderer concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

Contracting authorities may also award contracts based on a dynamic purchasing system by requiring that offers for a specific contract are to be presented in the format of an electronic catalogue. Contracting authorities may also award contracts based on a dynamic purchasing system in accordance with sub-paragraph-b of paragraph 3 and paragraph 4 provided that the request for participation in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority. That catalogue shall be completed subsequently by the economic operators, when they are informed of the contracting authority's intention to constitute tenders electronic catalogues, cf. sub-paragraph-b of paragraph 3.

#### Article 44.

##### *Arrangement of design contests*

The provisions of this Article cover design contests where the total value of the prizes and/or other payments to participants is over the threshold amount for service procurements pursuant to Article 23.

When a design contest is held as a stage in the procurement of a service, the total value of the contract must be taken into account, net of VAT, including those payments covered by paragraph 1. When a design contest is held and the contracting authority has not relinquished its right to make a service contract by negotiated procedures according to paragraph 3 of Article 39 at the completion of the design contest, the total possible value of the service contract, net of VAT, plus payments according to paragraph 1 shall be taken into account.

The admission of participants to design contests shall not be limited by reference to nationality or domicile in a particular region, or restricted on the grounds that they should be

either natural or legal persons.

Contracting authorities which wish to carry out a design contest shall make known their intention by means of a contest notice. If the contracting authority intends to award a service contract later, in accordance with paragraph 3 of Article 39, it must be stated in the notice of the contest. The notice or specifications referred to in a notice shall contain information regarding the arrangement of the contest, the criteria for selecting participants if their number is limited and the criteria for selecting plans or proposals. The notice and its publication shall in other respects comply with the rules concerning contract notices and their publication, as applicable. Participants in a design contest shall be informed of the results of the contest. If the release of information would impede law enforcement, be contrary to the public interest, prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or might prejudice fair competition between service providers, such information need not be published.

Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

The jury shall be autonomous in its decisions or opinions. It shall examine the plans and projects submitted by the candidates solely on the basis of the criteria indicated in the contest notice, in accordance with paragraph 4 of It shall record its ranking of projects in a report, signed by all of its members, made according to the merits of each project, together with its remarks and any points which may need clarification. Candidates may be given the opportunity to answer questions which the jury has recorded in the minutes to clarify any aspects of the projects. Complete minutes shall be drawn up of the dialogue between jury members and candidates.

## **V. CHAPTER**

### **Procurement documents and the preparations for procurement**

#### Article 45.

##### *Preliminary market consultations*

Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

For this purpose, contracting authorities may for example seek or accept advice from economic operators, independent experts or authorities. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

#### Article 46.

##### *Prior involvement of economic operator in the preparation of the procurement procedure.*

Where an economic operator, or a party who has connections to an economic operator has advised the contracting authority, or has otherwise 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 that party. Such measures shall include

the communication to the other candidates and tenderers of relevant information and the fixing of adequate time limits for the receipt of tenders.

The economic operator concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to observe the principle of equal treatment. Prior to any such exclusion, an economic operator shall be given the opportunity to prove that its involvement, or the involvement of related parties in preparing the procurement procedure is not capable of distorting competition.

#### Article 47.

##### *General terms*

Procurement documents shall include all information necessary for the tenderer to make a tender. The following shall be included in procurement documents, as applicable:

- a. Tender specification where quantities and other relevant issues are stipulated.
- b. The name of the contracting authority, the ID number, and all information concerning communications with the tender co-ordinator.
- c. Presentation of tenders.
- d. List of procurement documents.
- e. Deadlines, location and date of tender opening.
- f. Delivery time or duration of execution.
- g. Period of validity of tenders.
- h. Payments, indexation and insurance, if applicable.
- i. Documents to prove financial and technical competencies that the bidder shall provide, or may be required to provide, cf. Articles 71 and 72.
- j. Handling of inquiries from prospective tenderers.
- k. Delivery terms.
- l. Language or languages in which the tenders shall be submitted.
- m. Award criteria.
- n. Whether contract is divided into separate parts, cf. Article 53, and how many parts each economic operator may submit a tender for.
- o. Whether variants are permissible and the terms under which they can be made, including the minimum requirements such tenders need to fulfil.
- p. Deadline for the contracting authority to accept a bid.

#### Article 48.

##### *Tender form*

A tender form shall be included with the procurement documents, and it shall be presented in such a manner that all bids are submitted in the same fashion, and may thus be readily compared.

## Article 49.

### *Technical specifications*

The technical specifications shall be set out in the procurement documents. The technical specification shall lay down the characteristics required of a works, supply or service. Those characteristics may refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives. The technical specifications may also specify whether the transfer of intellectual property rights will be required.

The technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users. Where mandatory accessibility requirements are adopted by a legal act, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

Technical specifications shall afford equal access for economic operators. They may not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

Without prejudice to mandatory national technical rules to the extent that they are compatible with the obligations of the Republic of Icelandic pursuant to the EEA agreement, technical specifications shall be formulated in any of the following manners:

- a. By reference to any of the following and in the order of preference as here stated:
  1. national standards transposing European standards,
  2. European technical approvals,
  3. common technical specifications,
  4. international standards
  5. other technical reference systems established by the European standardisation bodies.

When the above documents do not exist, it is permissible to refer to Icelandic standards, Icelandic technical approvals or Icelandic technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words "or equivalent" or similar wording.

- b. In terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to compare tenders.
- c. In terms of performance or functional requirements as mentioned in Item b, with reference to the specifications mentioned in Item a as a means of presuming conformity with such performance or functional requirements.

- d. By referring to the specifications mentioned in Item a for certain characteristics, and by referring to the performance or functional requirements mentioned in Item b for other characteristics.

Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 4 is not possible; such reference shall be accompanied by the words "or equivalent" or similar wording.

Where a contracting authority makes use of Item a of paragraph 4, it cannot reject a tender on the grounds that the products and services tendered for do not comply with the specifications to which it has referred once the tenderer proves in his tender to the satisfaction of the contracting authority, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications. An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body, cf. Article 51.

Where a contracting authority uses paragraph 4 to lay down requirements for performance or functional requirements, it may not reject a tender for works, products or services which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or other technical reference system established by a European standardisation body, if these specifications address the performance or functional requirements which it has laid down. In his tender, the tenderer must prove to the satisfaction of the contracting authority and by any appropriate means that the work, product or service in compliance with the standard meets the performance or functional requirements of the contracting authority. An appropriate means might be constituted by a technical dossier of the manufacturer or a test report from a recognised body, cf. Article 51.

#### Article 50.

##### *Labels*

Where contracting authorities intend to purchase works, supplies or services with specific environmental or social characteristics they may require a specific label as means of proof that the required conditions are fulfilled. The contracting authority may require specific environmental or social characteristics in the technical specifications, the award criteria or the contract performance conditions, provided that all of the following conditions are fulfilled:

- a. The label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract.
- b. That the label requirements are based on objectively verifiable and non-discriminatory criteria;
- c. That labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate.
- d. The labels are accessible to all interested parties.

- e. The label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

Where contracting authorities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are referred to in the tender specifications that must be fulfilled. All labels that confirm that the works, supplies or services meet equivalent label requirements must be accepted.

Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting authority within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept other appropriate means of proof. It is a condition that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority in the tender specifications.

Where a label fulfils the conditions provided in sub-paragraphs-b, c, d and e of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities shall not require the label as such. The contracting authority may however define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

#### Article 51.

##### *Test reports, certification and other means of proof*

Contracting authorities may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions. Where contracting authorities require the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting authorities.

Where the economic operator concerned had no access to the certificates or test reports referred to in paragraph 1, or no possibility of obtaining them within the relevant time limits, the contracting authorities shall accept other appropriate means of proof than those referred to in paragraph 1. The condition for this is that the lack of access is not attributable to the economic operator concerned and provided that the economic operator concerned thereby proves that the works, supplies or services provided by it meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

#### Article 52.

##### *Variants*

Contracting authorities may authorise or require the tenderer to submit variants. The contracting authority shall specify in the contract notice, prior information notice or in an invitation to confirm interest whether he permits or requires that a variant be submitted, cf. also sub-paragraph-o of Article 47, but otherwise variants shall not be authorised. Variants shall be linked to the subject-matter of the contract.

The contracting authority authorising or requiring variants shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation. It must be pointed out whether variants may only be submitted where a

tender, which is not a variant, has also been submitted. The contracting authority shall ensure that award criteria may also be applied to variants that meet the minimum requirements, as well as valid tenders that are not variants.

Only variants meeting the minimum requirements laid down by the contracting authority shall be taken into consideration, cf. sub-paragraph-o of Article 47.

A contracting authority in a public tender for public supply or service contracts who has authorised or required variants shall not reject a variant on the sole ground that it would, where successful, lead to either a service contract rather than a public supply contract or a supply contract rather than a public service contract.

#### Article 53.

##### *Division of contracts into lots*

Contracting authorities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots. If a contracting authority decides not to divide a contract into lots it must specify the principal reasons for this in the procurement documents or in the contract report according to Article 96 when the procurement exceeds the threshold amounts of paragraph 4 of Article 23.

The contracting authority shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders may be submitted for only one, for several or for all of the lots.

The contracting authority may, limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest. The contracting authority shall indicate in the procurement documents the objective criteria or rules they intend to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

A contracting authority may award more than one lot to the same tenderer by combining several or all lots. The condition for this is that they have specified in the contract notice or in the invitation to confirm interest that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

#### Article 54.

##### *Prior information notice*

The contracting authority may make known their intentions of planned procurements through the publication of a prior information notice.

For restricted procedures and competitive procedures with negotiation, public authorities, with the exception of government institutions may use a prior information notice as a contract notice provided that the notice fulfils all of the following conditions:

- a. It refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;
- b. It indicates that the contract will be awarded by restricted procedure or competitive procedure with negotiation without further publication of a call for competition and invites interested economic operators to express their interest in writing or by electronic means.
- c. The prior information notice includes the necessary information that is listed in regulations issued by the minister.



- d. It has been sent for publication between 35 days and 12 months prior to the date on which the invitation referred to in paragraph 1 of Article 61, is sent to the participant.

The period covered by the prior information notice shall be a maximum of 12 months from the date the notice is transmitted for publication.

#### Article 55.

##### *Contract notices*

All procurements by public authorities of supplies, services and works that exceed threshold amounts according to paragraphs 1 and 4 of Article 23, shall be advertised electronically at a common site that the minister shall stipulate through regulations. In addition any kind of procurements may be advertised in a conspicuous manner so that all interesting economic operators will be able to participate in the procurement procedures, cf. however Article 39 and paragraph 2 Article 54. The contract notice shall include sufficient information so that economic operators can decide if they wish to take part in the procurement procedures.

Concurrent to or following such publication of a notice, a contracting authority may encourage specific parties to participate in the procurement procedure. Such parties may not, however, be provided with information other than that indicated in the advertisement.

#### Article 56.

##### *Publication and notification of procurement exceeding EEA threshold amounts*

Advertisements and notices regarding procurements that exceed threshold amounts in the European Economic Area, cf. paragraph 4 of Article 23 shall be filled out in a standardised form that is published in regulations issued by the Minister. Announcements and notices must be sent by electronic means to the Publications Office of the European Union and the contracting authority shall be able to demonstrate what day the notice was sent to the Publications Office.

Announcements and notices should not be published on a national level before they have been published abroad, according to paragraph 1 of However publication may take place at the national level if the contracting authority has not been notified of publication within two days from confirmation of receipt of the notice from the Publications Office of the European Union. Announcements and notices that are published at national level shall not contain information other than what is published abroad.

#### Article 57.

##### *Principles for time limits.*

The time limit for submission of tenders shall be sufficiently long to allow tenderers to produce their tenders. The length of the time limit shall mainly take account of the complexity of the contract and the time required for drawing up tenders.

The time limit shall be calculated from the day following publication of the contract notice up to and including the opening day unless otherwise stated. All calendar days are included.

The time limits for the receipt of tenders, which shall be longer than the minimum time limits set out in Articles 58 and 59, shall be fixed so that all economic operators concerned may be aware of all the information needed to produce tenders and where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents.

The contracting authority shall extend the time limit for the receipt of tenders so that all economic operators can study the necessary information needed for the drawing up of a tender if important additional information has not been supplied at the latest six days before the time limit fixed for the receipt of tenders, or where significant changes are made to the procurement documents. In the event of an accelerated procedure the additional information shall be supplied at least four days before the expiry of the time limit for submission of tenders. The length of the extension shall be proportionate to the importance of the additional information or change made to the procurement documents. Where the additional information has either not been requested in good time or its importance with a view to preparing responsive tenders is insignificant, contracting authorities shall not be required to extend the time limits.

The contracting authority shall extend the time limit for submitting tenders for a period of five days when it is not possible to provide access to the procurement documents without payment through electronic means, cf. paragraphs 2 and 3 of Article 60.

#### Article 58.

##### *Time limits in open procedures*

Time limit for submission of tenders in open procedures exceeding national threshold limits shall be a minimum of 15 calendar days.

Time limit for submission of tenders in open procedure exceeding threshold limits in the European Economic Area shall be at least 35 calendar days.

Time limits for submission of tenders according to paragraphs 1 and 2 may be shortened by five days if electronic tender may be submitted in accordance with Article 22. Time limits for submission of tenders may also be shortened pursuant to paragraph 2 down to 15 calendar days when prior information notice according to Article 54 has been published at least 35 days before and at most 12 months before the publication of a general announcement.

If there is an urgent need to accelerate the tender procedure the contracting authority may derogate from the time limits that are stated in this provision. However, the time limit for submitting tenders may never be shorter than seven calendar days according to paragraph 1 and 15 calendar days according to paragraph 2 from the publication of the notice.

#### Article 59.

##### *Time limits in restricted procedures, competitive procedures with negotiation, competitive dialogue and innovative partnership*

The deadline for submitting requests to participate in pre-selection for restricted procedures, competitive procedures, negotiated procedures and innovation partnership exceeding national threshold amounts shall be at least 15 calendar days from the publication of the contract notice. It is however permitted to shorten time limits for submitting a request for participation by five days if one can submit a request by electronic means according to Article 22.

Time limits for submitting requests for participation in a pre-selection procedure for restricted procedure, competitive procedure with negotiation, negotiated procedure and innovation partnership that is exceeding threshold amounts for the European Economic Area shall be at least 30 calendar days from the publication of the contract notice.

If a prior information notice is used in order to present procurements the time limit shall then be based on the time it takes to submit participation requests, cf. paragraphs 1 and 2, from the day when an invitation to confirm interest was sent.

Parties selected in a pre-selection process for restricted procedure, or competitive

procedure shall be given at least ten calendar days to submit tenders from the time when the procurement documents were sent out.

Those who have been selected in the pre-selection process for restricted procedures, or for competitive procedures exceeding the threshold amounts in the European economic Area, shall give a time limit for at least 30 calendar days to submit a tender from the time when the procurement documents were sent out. It is however permitted to shorten the time limit for submission of tender by five days if it is permitted to submit electronic tenders in accordance with Article 22. It is also permitted to shorten the time limit for submitting tenders down to ten calendar days when a prior information notice according to Article 54 has been published at least 35 days before and at most 12 months before the publication of a general announcement.

If there is an urgent need to accelerate the tender procedure the contracting authority may derogate from the time limits that are stated in this provision. The time limit for submission of requests for participation, according to paragraph 2, shall however, never be shorter than 15 calendar days from the publication of the notice. However, the time limit for submitting tenders may never be shorter than seven calendar days according to paragraph 4, and ten calendar days according to paragraph 5 of

Public entities with the exception of organisations under the state may negotiate shorter time limits for the submission of tenders with candidates who have been selected through a pre-selection procedure, according to paragraphs 4 and 5, if the participants all receive the same amount of time to negotiate and submit their tenders.

#### Article 60.

##### *Electronic availability of procurement documents*

The contracting authorities shall by electronic means offer unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice in accordance with Article 51 or the date on which an invitation to confirm interest was sent. In a notice or in an invitation to a participant to confirm interest it must be indicated where it is possible to obtain the procurement documents by electronic means.

Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in paragraph 2 of Article 22, the contracting authority may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by other means than electronic means in accordance with paragraph 2 of Article 22. In such a case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency cf. paragraph 4 of Article 58, and paragraph 6 of Article 59.

Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because of confidentiality according to paragraph 2 of Article 17 it should be indicated in a notice, or in an invitation to confirm interest, which measures are required in order to protect confidential information and how it is possible to gain access to the relevant documents. In such a case, the time limit for the submission of tenders shall be prolonged by five days, except in the cases of duly substantiated urgency cf. paragraph 4 of Article 58, and paragraph 6 of Article 59.

The contracting authority provides all tenderers who participate in the procurement procedures with additional information that is mainly connected with specifications and accompanying documents, if any, no later than six days before the time limit to receive tenders expires, if additional information has been requested and given sufficient notice. If there is accelerated procedure according to paragraph 4 of Article 58, and paragraph 6 of Article 59, the time limit shall be four days

#### Article 61.

##### *Invitation to candidates*

In restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships with pre-selection the contracting authority shall simultaneously and in writing invite the selected candidates to submit their tenders or in the case of competitive dialogue, to take part in the dialogue.

Where a prior information notice is used as a call for competition pursuant to paragraph 2 Article 54, the contracting authority shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.

The invitations shall include a reference to the electronic address on which the procurement documents have been made directly available by electronic means. The invitations shall be accompanied by the procurement documents, where those documents have not been the subject of unrestricted and full direct access, free of charge, cf. paragraphs 2 and 3 of Article 60, and have not already been made otherwise available.

#### Article 62.

##### *Revocation of tenders*

A tenderer may revoke his tender prior to the opening of the tenders, provided this is done in writing or by other equally secure means.

#### Article 63.

##### *Postponement of the opening of the tenders*

If the opening of tenders has to be postponed, this must be done with at least four calendar days' notice. If less than four days remain until the opening, postponement may not be announced, instead, an opening meeting must be held and the names of parties submitting tenders shall be recorded without opening the tenders. Only those parties who submitted tenders may be invited to participate further.

#### Article 64.

##### *Delivery of tenders*

Tenders shall be submitted in a sealed envelope; the name and address of the tenderer must be indicated on the envelope, together with the name of the tender and number, where applicable. Tenders submitted by electronic means shall be governed by the provisions of Article 22.

If tenders are sent by mail or fax, the tenderer is responsible for ensuring that they are delivered to the proper destination before the opening of tenders.

The total tendered amount may be submitted only if unit prices and other required documents accompany it in a sealed envelope, or have verifiably been sent by mail the day before the opening of the tenders. The tenderer may request that the unit prices will not be examined unless his tender is under consideration.

Tenders must be signed by a competent party.

#### Article 65.

##### *Opening of tenders*

When tenders are submitted by electronic means the tenderers, at the end of the deadline for submitting tenders, shall be notified of the following points:

- a. Tenderer's name.
- b. Total tender amount.
- c. Whether the tender is submitted as a variant.

When tenders are submitted by other means the tenderers shall be permitted to attend the opening of the tenders where the points mentioned in paragraph 1 are read out.

Tenders received too late must be returned to the tenderers unopened together with an explanation of the reasons for their return.

## **VI. CHAPTER**

### **Selection of candidates and awarding the contract**

#### *Article 66.*

##### *General provisions on awarding a contract*

The decision to award a contract shall be taken on the basis criteria that are set out in Articles 79-81 provided the following conditions are met:

- a. A tender meets the requirements, conditions and guidelines that are stated in the procurement documents, and if it is not invalid, cf. Article 82, and as the case may be taking into consideration any valid variants, cf. Article 52.
- b. A tender is received from a tenderer who has not been excluded, according to Article 68.
- c. A tender fulfils the requirements for competence according to Article 69-72, and as the case may be, the conditions and rules that are the basis for the reduction in the number of tenders or participants according to Article 78.

The contracting authority shall at the same time make sure that the conditions of paragraph 1 are available in accordance with the provisions of Articles 73 and 74.

The contracting authority may reject the awarding of the contract to the tenderer who has the most economically advantageous tender if it is possible to demonstrate that it does not comply with collective agreements, environmental legislation or social rights.

In an open procedure the contracting authority may evaluate a tender before inquiring whether the tenderer fulfils the requirements on competence according to Articles 68 -77. A satisfactory evaluation of the requirements must however be conducted before a contract is awarded to the tenderer.

When information or documentation which the tenderer submits appears to be incomplete or if it contains errors, or if specific documents are missing, the contracting authority can insist that the tenderer submit, add to, explain, or complete information or data within a reasonable time limit. Such explanations, rectifications or additional information may however not contain changes in the substantial aspects of the tender, or be likely to disrupt competition or to encourage discrimination.

#### *Article 67.*

### *General provisions concerning economic operators*

Candidates or tenderers who, under the law of their respective states, are entitled to provide the relevant service, shall not be rejected solely on the ground that domestic regulations stipulate that they would be required to be either natural or legal persons. In the case of service and works contracts as well as supply contracts that also include services and/or supervision and installation operations, legal persons 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 in question.

Groups of economic operators may submit tenders or put themselves forward as candidates as long as they bear collective responsibility for the fulfilment of the contract. In order to submit a tender or a request to participate, these groups may not be required by the contracting authorities to assume a specific legal form unless it is necessary for the satisfactory performance of the contract. A contracting authority may stipulate that one economic operator represent the others in executing the contract and fulfilling all commitments to the contracting authority.

### Article 68.

#### *Reasons for exclusion due to personal situation.*

Any candidate or tenderer who has been the subject of a conviction by final judgment for the following offences shall be excluded from participation in procurement procedures:

- a. participation in a criminal organisation,
- b. corruption,
- c. fraud,
- d. terrorist offences or offences linked to terrorist activities
- e. money laundering or terrorist financing,
- f. child labour and other forms of trafficking in human beings

The obligation to exclude an economic operator shall also apply where the person convicted by final judgment of an offence according to paragraph 1, is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control therein.

A candidate or tenderer shall be excluded from participation in a procurement procedure if he is in breach of his obligations relating to the payment of taxes or pension fund premiums or other legal charges and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the European Economic Area.

Furthermore, contracting authorities may exclude from participation in a procurement procedure an economic operator or tenderer where the contracting authority can demonstrate by any appropriate means that the candidate or the tenderer is in breach of its obligations relating to the payment of taxes, pension fund premiums or other statutory charges. This paragraph shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

On an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment, derogation from the exclusion may be provided for

according to paragraphs 3 and 4, provided that these reasons are more weighty than the reasons for the exclusion of the tenderer.

Contracting authorities may exclude from participation in a procurement procedure any economic operator in any of the following situations:

- a. Economic operator has violated applicable national or international obligations in the fields of environmental, social and labour law and collective agreements and the contracting authority is able to demonstrate this.
- b. The economic operator is bankrupt, or is being wound up, where he has entered into an arrangement with creditors, or has entered into another similar situation.
- c. It is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding-up or for an arrangement with creditors or has entered into another similar situation.
- d. The economic operator has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate.
- e. Where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
- f. Where there is a conflict of interest in the procurement procedures which cannot be effectively remedied by other less intrusive measures.
- g. The prior involvement of the economic operator in the preparation of the procurement procedure, as referred to in Article 46, is thought to disrupt competition and cannot be remedied by other, less intrusive measures.
- h. Where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, which led to early termination of that prior contract, a claim for damages or other comparable sanctions.
- i. The economic operator has been guilty of serious misrepresentation in supplying the information required, has withheld such information or is not able to submit the supporting documents required pursuant to Article 73, all of which would be necessary for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.
- j. The economic operator has undertaken to unduly influence the decision-making process of the contracting authority, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

An assessment of whether or not paragraphs 3, 4 and 6 apply to an economic operator shall take into account the involvement of the same business unit with the same or almost the same owners in the same or almost the same industry on the same market, without regard to whether or not the economic operator has changed its registration number or been re-established. In this regard, it is permissible to check the business history of the directors and principal owners.

Notwithstanding sub-paragraphs b and c of paragraph 6, the contracting authority may

provide for the possibility that the economic operator is not excluded where the contracting authority has established that the economic operator in question will be able to perform the contract.

Any economic operator that is in one of the situations referred to in paragraphs 1 and 6 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

Where the period of exclusion has not been set by final judgment, that period shall not exceed five years from the date of the conviction by final judgment in the cases referred to in paragraph 1 and no more than three years from the date of the relevant event in the cases referred to in paragraph 6. The Minister may, by means of a regulation, issue further rules on the maximum exclusion period.

#### Article 69.

##### *Criteria for the qualitative selection of tenderers*

The contracting authority may only establish conditions for the participation of economic operators on the basis of the following requirements for eligibility:

- a. Suitability to pursue the professional activity, cf. Article 70.
- b. Economic and financial standing, cf. Article 71.
- c. Technical and professional ability, cf. Article 72.

Contracting authorities may only impose criteria referred to in paragraph 1, that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the subject-matter of the contract.

The contract notice or procurement documents shall specify which criteria mentioned in paragraph 1 are required for participation and which documents the economic operator needs to submit as evidence.

#### Article 70.

##### *Suitability to pursue the professional activity*

Contracting authorities may require economic operators to be enrolled in one of the professional or trade registers. When an economic operator is from one of the other states in the European Economic Area or from one of the original member states of the European Free Trade Association, the economic operator may be requested to prove its registration in its home state with a certificate.

In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the contracting authority may require them to prove that they hold such authorisation or membership.

#### Article 71.

##### *Financial standing of the tenderer*



The financial standing of the tenderer shall be sufficiently secure so that commitments to the contracting authority may be fulfilled. For that purpose, contracting authorities may require, in particular, that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, the contracting authority may require that the economic operator provide information on his annual accounts showing the ratio, for instance, between assets and liabilities. They may also require an appropriate level of professional risk indemnity insurance.

The minimum yearly turnover that economic operators are required to have shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate the main reasons for such a requirement in the procurement documents.

The ratio, for instance, between assets and liabilities may be taken into consideration where the contracting authority specifies the methods and criteria for such consideration in the procurement documents. Such methods and criteria shall be transparent, objective and non-discriminatory.

Where a contract is divided into lots requirements regarding financial standing shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots in the event that the successful tenderer is awarded several lots to be executed at the same time.

When procurements are made through mini-tenders, or price surveys within a framework agreement the maximum annual turnover shall be calculated according to paragraph 2 on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum yearly turnover requirement according to paragraph 2 shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

## Article 72.

### *Technical and professional ability*

The technical and professional ability of the economic operator shall be sufficiently secure so that commitments to the contracting authority may be fulfilled. For that purpose the contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

Contracting authorities may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past. A contracting authority may assume that an economic operator does not possess the required professional abilities where the contracting authority has established that the economic operator has conflicting interests which may negatively affect the performance of the contract.

In procurement procedures for supplies requiring siting or installation work, services or works, the professional ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

## Article 73.

### *Single Procurement Document*

An economic operator may submit a special Single Procurement Document consisting of a self- declaration as preliminary evidence for the contracting authority in replacement of certificates issued by public authorities or comparable parties confirming that the relevant economic operator fulfils the following conditions:

- a. That it is not in one of the situations in which economic operators shall or may be excluded according to Article 68.
- b. That the economic operator meets the relevant selection criteria that have been set out pursuant to Articles 69 -72.
- c. Where applicable, the economic operator fulfils the objective rules and criteria that have been set out pursuant to Article 78.

Where the economic operator relies on the capacities of another entity pursuant to Article 76, the tenderer's Single Procurement Document shall also contain the information referred to in paragraph 1 in respect of such entity.

The tenderer's Single Procurement Document shall consist of a formal statement by the economic operator that the relevant ground for exclusion does not apply and/or that the relevant selection criterion is fulfilled and shall provide the relevant information as required by the contracting authority. The tenderer's Single Procurement Document shall further identify the public authority or third party responsible for establishing the supporting documents and contain a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide those supporting documents. Where the contracting authority can obtain the supporting documents directly by accessing a database pursuant to paragraph 8, the Single Procurement Document shall also contain the information required for this purpose, such as the internet address of the database, any identification data and, where applicable, the necessary declaration of consent.

An economic operator may reuse a Single Procurement Document which has already been used in a previous procurement procedure, provided that it confirms that the information contained therein continues to be correct.

The Ministry shall issue a standard Single Procurement Document form which shall be provided exclusively in electronic form.

A contracting authority may require economic operators at any moment during the procurement procedure to submit all or part of the supporting documents where this is necessary to ensure the proper conduct of the procurement procedure.

Before awarding the contract, the contracting authority shall require the economic operator to which it has decided to award the contract to submit up-to-date supporting documents in accordance with Article 74 and, where appropriate, Article 75, including any necessary clarification if needed. There is not a requirement to submit supporting documents when concluding a framework agreement according to paragraph 4 and sub-paragraph 1 of paragraph 5 of Article 40.

Also, economic operators shall not be required to submit supporting documents where the contracting authority having awarded the contract or concluded the framework agreement already possesses these documents. Where the contracting authority has the possibility of obtaining the supporting documents, certificates or other documentary evidence for pre-qualification directly by accessing a national database or a system, free of charge, the economic operator shall not be required to submit documents or updates to them.

### *Means of proof*

A contracting authority may require the certificates, statements and other means of proof as evidence for the absence of grounds for exclusion according to Article 68, and for the fulfilment of the selection criteria in accordance with Articles 69 -72. A contracting authority shall not require means of proof other than those referred to in this Article and in Article 75 concerning quality- and environmental standards. In respect of Article 76, economic operators may rely on any appropriate means to prove to the contracting authority that they will have the necessary resources at their disposal.

If an economic operator is required to provide evidence concerning the points specified in Article 68, the following shall be regarded as sufficient evidence:

- a. With respect to the conditions of paragraph 1 and paragraph 2 of Article 68, the production of a criminal record, extract from the judicial record or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence that person comes, showing that these requirements have been met.
- b. As regards paragraphs 3 and 4, and sub-paragraphs b and c of paragraph 6 of Article 68, a certificate issued by a competent authority in the appropriate state.

Where the country of origin of the economic operator does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1, 3 and 4 and sub-paragraphs b and c of paragraph 6 of Article 68, they may be replaced by a declaration on oath, or by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country where the economic operator is established

Proof of the economic operator's economic and financial standing may, as a general rule, be provided, cf. Article 71 by one or more of the references listed in regulations issued by the Minister. Where, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial standing by any other document which the contracting authority considers appropriate.

Evidence of the economic operators' technical abilities may be provided, cf. Article 72, by one or more of the means that shall be listed in regulations issued by the Minister, in accordance with the nature, quantity or importance, and use of the works, supplies or services.

### Article 75.

#### *Quality assurance standards and environmental management standards*

Contracting authorities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. The contracting authority shall recognise equivalent certificates from bodies established in other member states of the European Economic Area or from one of the original member states of the European Free Trade Association. The contracting authority shall also accept other evidence presented of equivalent quality assurance measures from economic operator.

Where a contracting authority requires the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, it shall refer to the Eco-Management and Audit Scheme

(EMAS) of the European Union or to other environmental management systems as recognised in accordance with the pertinent regulation or other environmental management standards based on the relevant European or international standards by accredited bodies. The contracting authority shall recognise equivalent certificates from bodies established in other member states of the European Economic Area or from one of the original member states of the European Free Trade Association.

Where an economic operator had demonstrably no access to such certificates according to paragraphs 1 and 2, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall also accept other equivalent evidence.

#### Article 76.

##### *Reliance on the capacities of other entities*

An economic operator may, where appropriate and for a particular contract, rely on the financial, technical and professional capacities of other entities, regardless of the legal nature of the links which it has with them. When an economic operator relies on the educational, the relevant professional experience or professional capacities of other entities, then the economic operator may however only rely on these capacities of other entities where the latter will perform the works or services for which these capacities are required. An economic operator shall at the same time prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing a commitment by those entities to that effect.

The contracting authority shall, in accordance with Articles 73 and 74, verify whether the entity on whose capacity the economic operator intends to rely fulfils the relevant selection criteria and whether there are grounds for exclusion pursuant to Article 68. The contracting authority shall require that the economic operator replaces an entity which does not meet a relevant selection criterion, or in respect of which there are compulsory grounds for exclusion according to Article 68. The contracting authority may require that the economic operator substitutes an entity in respect of which there are non-compulsory grounds for exclusion according to Article 68.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract. Under the same conditions, a group of economic operators as referred to in paragraph 2 of Article 67 may rely on the capacities of participants in the group or of other entities.

In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in paragraph 2 of Article 67, by a specific participant in that group.

#### Article 77.

##### *Official lists of approved economic operators and certification by bodies established under public or private law*

Economic operators that are registered in official lists of approved contractors, sellers or service suppliers, or are certified as such by bodies established under public or private law in other states of the European Economic Area or in one of the original member states of the European Free Trade Association, can during a procurement procedure, submit to the contracting authority a certificate of registration issued by a competent authority, or a

certificate issued by a competent certification body. These certificates or licences shall contain the referrals that enabled these economic operators to obtain registration on an official list, or to receive a certificate as well as classification according to the list.

It should be assumed that certified registration by competent bodies on an official list or certificate, issued by the certification body, is an indication of competence regarding requirements for selection based on selection criteria which the official list or the certificate covers.

Information which can be deduced from registration on official lists or certification may not be questioned without justification. With regard to the payment of pension fund premiums and taxes, an additional certificate may be required of any registered economic operator at any time.

Requirements for proof regarding prerequisites for selection based on selection criteria which the official list or certification covers shall conform to Article 74 and as the case may be to Article 7. It is not permitted regarding the registration of economic operators from other states of the European Economic Area or from one of the original member states of the European Free Trade Association on an official list or their certification, to demand further evidence or statements, other than those that domestic economic operators are required to produce.

Economic operators from other states of the European Economic Area or from one of the original member states of the European Free Trade Association are not to be required to obtain domestic registration or certification in order to participate in a procurement procedure. The contracting authority shall recognise equivalent certificates from bodies established in other member states of the European Economic Area or from one of the original member states of the European Free Trade Association. Other kinds of equivalent proof shall also be accepted.

#### Article 78.

##### *Reduction of number of participants and tenders through pre-selection*

In restricted procedure, competitive procedure, competitive dialogue and innovative partnership the contracting authority can through pre-selection limit the number of participants who meet the selection criteria, which he invites to submit a tender, or to engage in dialogue, provided that the minimum number of competent participants according to paragraph 3 is available.

The contract notice or in the invitation to confirm interest, the contracting authority shall include objective and impartial conditions or rules that form the basis for selection of participants along with their minimum and maximum numbers as appropriate.

At least five participants must be selected to present tenders as a result of pre-selection for restricted procedure. At least three participants must be selected to present tenders as a result of pre-selection for competitive procedure, competitive dialogue and innovative partnership. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

A contracting authority shall give at least the minimum number of participants previously specified the option of taking part in the procurement procedures. If there is an insufficient number of participants fulfilling pre-selection requirements or an insufficient number of capable participants, the contracting authority is permitted to continue with the procurement procedures by allowing those who meet the requirements to take part in the procurement procedures. Economic operators which did not take part in pre-selection may not take part in the procedures at this stage. The same applies to participants not fulfilling the capability requirements.

When a contracting authority makes use of his authority to reduce the number of renders, or the number of participants in the competitive procedure, or the competitive dialogue, cf. Articles 36 and 37, such decisions shall be based on selection criteria presented in the contract notice, specifications or descriptive documents. In the final stages of such procurement, the number of participants shall be sufficient to ensure genuine competition insofar as there are enough tenders or suitable candidates.

#### Article 79.

##### *Award criteria.*

The contracting authority shall choose the most economically advantageous tender based on:

1. the lowest price,
2. the least cost, or
3. the best price/quality ratio.

The award criteria based on sub-paragraph-2 of paragraph 1 shall be evaluated based on cost-effectiveness, e.g. calculations based on life-cycle cost.

The award criteria based on sub-paragraph-3 of paragraph 1, shall be linked to the contents of the contract, and can i.a. cover:

- a. Quality, including technical benefits, appearance and usefulness, accessibility, design for all users, social, environmental and innovative qualities, and trade and the requirements for that.
- b. Organisation, education, capability and experience of employees who are going to implement the contract, in particular if the capability of the employees who implement the contract can have significant effect on its implementation.
- c. Service after completion of works and technical aid, terms of delivery, i.e. date of delivery, delivery process and time of delivery, or deadline to complete the work.

When choosing a tender on the basis of sub-paragraph 3 of paragraph 1 the buyer may determine a fixed price, or fixed cost, and choose the tender solely based on quality, environmental or social factors.

The award criteria shall be linked to the contents of the contract if it relates to works, supplies or services that has to be provided according to a contract, in part or in any stage of its life-cycle, including because of aspects that relate to:

- a. A special process in the production, delivery or business with such works or services.
- b. A special process in another stage of its life-cycle, even though such aspects are not part of their material substance.

The contracting authority shall arrange the award criteria in such a way that the criteria will ensure the possibility of active competition. It must also be possible to verify the information from the tenderers in order to evaluate how well the tenders meet the criteria.

The contracting authority shall specify in the procurement documents the relative weightings of each criterion that forms the basis of the choice of the most economically advantageous tender, except when the choice of a tender is solely based on price. Those weightings can be expressed by providing for a range with an appropriate maximum spread. If it is impossible to specify a certain weighting for award criteria due to objective reasons the criteria must be prioritised depending on their importance.

#### Article 80.

##### *Calculation of life-cycle cost*

The calculation of the life-cycle cost shall, as may be appropriate, cover a part of, or all of the following life-cycle costs of the supplies, services or works.

- a. The costs that the contracting authority or other users bear, such as:
  1. cost of acquiring,
  2. cost of use, e.g. energy use and the use of other resources,
  3. maintenance cost,
  4. processing cost, e.g. the cost of gathering and recycling.
- b. Cost that pertains to environmental externalities in relation to supplies, services or works during their life-cycle, provided that it is possible to determine their value. Such cost may include cost of releasing greenhouse gasses and other release of pollutants and other costs involved in reducing climate change.

When the contracting authority evaluates the cost that is based on the calculation of life-cycle cost he shall indicate in the procurement documents which documents the tenderers need to submit and which method the contracting authority will use in order to determine the life-cycle cost based on these documents. The method that is used in order to evaluate the cost that pertains to environmental externalities shall meet all the following criteria:

- a. be based on objectively verifiable criteria without discrimination; and if it is not for repeated or continuous use, it shall not be more advantageous or disadvantageous for specific economic operators so as to be undue,
- b. be accessible to all interested parties,
- c. economic operators shall be able to present the relevant documentation that is considered sufficient without it resulting in discrimination.

If a particular method of calculating the life-cycle cost been enacted into law it must be applied in the evaluation of the life-cycle cost.

#### Article 81.

##### *Unnaturally low tenders*

If a tender appears to be unnaturally low compared to the work, supplies or services, the contracting authority shall request that the tenderer explain the price or the cost that is indicated in the tender. Explanations can in particular relate to:

- a. the efficiency of the production process, service or construction method,
- b. technical solutions that have been selected, and/or any kind of unusually favourable circumstances of the tenderer at the implementation of a work, the delivery of a product or the rendering of service.
- c. inventiveness in the proposals of the tenderer regarding work, supplies or services,
- d. conformity with applicable provisions of collective agreements and legislation on occupational health and safety, and working conditions at the location of the implementation of the work, the delivery of a product or the rendering of service.
- e. the obligations of the tenderer regarding the sub-contractor, cf. Article 88.,
- f. the possibility of a tenderer of receiving state aid.

The contracting authority shall evaluate the information that is presented through discussions with the tenderer. A tender may only be rejected on this basis if the documentary proof that is submitted does not clarify in an acceptable manner the low price or costs that is suggested, when taking into consideration the issues that are mentioned in paragraph 1.

If the contracting authority arrives at the conclusion that a tender is unnaturally low because it does not conform with the obligations of sub-paragraph-d of paragraph 1, the tender must be rejected.

If the contracting party arrives at the conclusion that the offer is unnaturally low because bidder has received state aid, his tender will only be declined if the bidder has not managed, within a reasonable time decided after the bidder was given a chance to comment, to prove that a state grant has been legally granted. If the contracting authority turns away a tender under these circumstances he shall notify the EFTA Surveillance Authority of this decision if the procurement exceeds the threshold amounts of paragraph 4 of Article 23.

The contracting party is required to reason the decision of declining an offer on the basis of it being unnaturally low.

#### Article 82.

##### *Invalid tender*

A tender shall be considered invalid if it does not comply with the procurement documents, is received too late, if there is proof of secret consultation, or corruption, or if the contracting authority feels that it is unnaturally low. A tender is at the same time not felt to meet the conditions of the procurement procedures, if it is presented by a tenderer who lacks the necessary capability or does obviously meet standards, without substantial changes, to meet the needs of the contracting authority, as specified in the procurement documents.

#### Article 83.

##### *Rejection of a tender*

The contracting authority shall be deemed to have rejected a tender if he has concluded a contract with another party, if the validity of the tender has expired without an extension having been requested, or if all tenders have been formally rejected.



#### Article 84.

*Notice of an award due to procurement exceeding the threshold amounts of the EEA.*

If the procurement exceeds the threshold amount for the European Economic Area pursuant to paragraph 4 of Article 23 the contracting authority shall notify of the awarding of a contract no later than 30 days after the awarding of the contract or a framework agreement with the results of the procurement procedures. The awarding of a contract through the dynamic purchasing system must also be notified, it is however permitted to collect notifications and send them out within 30 days from the end of each quarter.

Notices shall be dispatched to the Publications Office of the European Union that will carry out their publication, cf. Article 56.

#### Article 85.

*Notice of the selection of a tender, and the reasoning for the rejection of a tender*

Contracting authorities shall, as soon as possible, inform candidates or tenderers of decisions reached concerning the selection of a tender, the conclusion of a framework agreement, or admittance to a dynamic purchasing system.

The notification of the decision of the selection of a tender shall i.a. include information concerning the qualities and advantages of the tender that the contracting authority selected based on the selection criteria of the procurement documents including a statement concerning the precise stand-still period for the awarding, cf. Article 86. If a contract has been put up for tender through pre-announcement of contract notice and the contracting authority decides not to award more contracts during the period that the contract notice covers, then this must be specially mentioned in the contract award notice. The notification shall include, as appropriate, the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure or implement a dynamic purchasing system. The contracting authority shall provide this information in writing on request.

A notice according to paragraphs 1 and 2 shall be sent to all economic operators that have not been rejected or turned away from the procurement procedures by final decision. A decision on exclusion is not considered to be final until the tenderer has been notified thereof, and the deadlines for referring it to the decision of the Public Procurement Complaints Commission, have all expired, or it has been confirmed by the commission.

On request, the contracting authority shall, as quickly as possible, provide the reasons for its decision as follows:

- a. An unsuccessful candidate shall be informed of the reasons for the rejection of his application.
- b. An unsuccessful tenderer shall be informed of the reasons for the rejection of his tender. If a tender has been rejected because it does not conform to technical specifications referred to in paragraphs 6 and 7 of Article 49, reasoning must be provided as to why the tender is regarded as not fulfilling the technical specifications or why it is unacceptable with regard to the performance or functional requirements.
- c. Any tenderer who has made an admissible tender must be informed of the characteristics and merits of the tender selected by the contracting authority, as well as the name of the successful tenderer or the parties to the framework agreement.

- d. The tenderer who has made an admissible tender must be informed of the implementation and progression of the negotiations and the dialogues with the tenderers.

A request for reasoning according to Paragraph 4 must be provided within 14 days from the time the tenderer was informed of the decision, and the reasoning must be available not later than 15 days after the request was received by the contracting authority or the coordinator of tenders. However, the reasoning shall not contain information regarding the contract award, the conclusion of a framework agreement or admittance to a dynamic purchasing system where the release of such information could impede law enforcement. The same applies to cases in which the release of information would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

#### Article 86.

##### *Contract award standstill period and acceptance of tender.*

The contract papers may not be signed following the decision to award the contract until a five day standstill period has passed with respect to procurements exceeding domestic threshold amounts, according to paragraph 1 of Article 23, and after a ten day standstill period has passed, regarding procurements exceeding the threshold amounts of the EEA according to paragraph 4 of Article 23, from the date after a notice according to paragraphs 1 and 2 of Article 85 is considered having been published. The standstill period is however always considered completed when 15 days have passed from the day following the sending of the notice. The publication of electronic notices shall be governed by the instructions laid down in administrative law regarding electronic procedure.

Standstill period according to paragraph 1 does not apply in the following instances.

1. When awarding a contract that can be done without prior contract notice.
2. When awarding a contract when it is conclusive that there is only one tenderer or candidate.
3. When awarding a contract based on a framework agreement, according to Article 40, or on a dynamic purchasing system according to Article 41.

A tender must be finally accepted in writing during the period of validity of the tender, and in such case a binding contract has been established based on the tender documents and on the submitted tender from the tenderer.

When the contracting authority is not able to take a decision regarding tenders within the time limits for the tender, it may be requested that the tenderers extend their tenders for a short period of time. The condition for this is that all participants agree to this procedure, or that there are reasonable grounds which justify such extension. Under the same condition it may be requested, after the time limits for the tender has expired, that the tenderers announce that their tenders have become valid again, however only for a very short period of time. When a contract has been declared inactive according to the provisions of Chapter XII it is permitted to accept the tender that should rightfully have been selected irrespective of the period of validity of the tender.

A special contract may be entered into for the purchase of supplies, services or the

performance of work based on the invitation to tender after a tender (proposal) has been accepted, but the basic elements of the tender shall not be modified in such way that competition may be disrupted, or that this would lead to discrimination.

When a contract has been awarded all tenderers must then be informed thereof without delay.

## **VII. CHAPTER** **The performance of the contract**

### Article 87.

#### *Conditions for the performance of contracts*

The contracting authority may lay down special conditions relating to the performance of a contract if the conditions are related to the contents of the contract, cf. paragraph 5 of Article 79, and are indicated in the contract notice or the specifications. The conditions can primarily be related to matters concerning economic, innovation related, environmental, social or occupational aspects.

### Article 88.

#### *Subcontracting*

The procurement documents must include a compulsory demand that the tenderer provides information on which parts of the contract he plans to make a third party implement as a subcontractor, and such information shall be put forward before the signing of the contract.

The tenderer shall inform the client which subcontractors he plans to employ and seek the approval of the client before the subcontractor starts working. The contracting authority may at the same time demand that the tenderer provide a declaration of competence according to Article 73 for sub-contractors. If reasons for exclusion according to Article 68 apply to sub-contractors the contracting authority shall, as the case may be, demand that a new sub-contractor substitute the former.

Information of the tenderer on subcontractors shall not influence the responsibility of the tenderer towards the contracting party. Subcontracting shall in all instances be based on a written work contract.

### Article 89.

#### *Pseudo-contracting*

An employment relationship between parties is the governing principle in the relations between the employees and the employer. A contractor or sub-contractor may not conclude a contract for sub-contracting with individual workers or groups of workers where an employment relationship is involved and such is appropriate with regard to normal practice and the nature of the situation.

### Article 90.

#### *Revisions of a contract during period of validity*

A contract or a framework contract may be revised without starting new procurement procedures in the following instances:

- a. When terms concerning contract revisions, irrespective of their value, have been clearly indicated in the revision provisions of the contract, including provisions on

price adjustments and options. Such terms shall lay down the scope and nature of possible revisions or options, and the conditions for these.

- b. In the case of an additional work, service or supplies not included in the project initially but considered essential and must, through unforeseen circumstances, be carried out by the same bidder, provided that such work cannot be technically or economically separated from the main contract without great inconvenience to the contracting authorities because of technical or financial reasons. The aggregate value of contracts awarded for additional work may not exceed half of the amount of the original contract amount if that amount exceeded the European threshold amounts according to paragraph 4 of Article 23.
- c. When the need for revision arises because of unforeseen events which the contracting authority could not anticipate. The value of a contract awarded for additional work may not exceed half of the amount of the original contract amount if that amount exceeded the European threshold amounts.
- d. When another economic operator substitutes the one that the contracting authority awarded the contract originally to by applying the revision clause, cf. sub-paragraph-a of the restructuring of an economic operator where another economic operator that meets the conditions of competence based selection, takes on the position of the original contracting party in whole or in part, provided that this does not entail other significant amendments to the contract, or because the contracting authority itself assumes the obligations of the principal contractor towards the sub-contractor.
- e. When revisions irrespective of their value are not substantial, cf. paragraph 4.
- f. When the value of revisions are less than amounts to the threshold amounts according to paragraph 1 of Art. 23. or when the value of revisions are less than 10% of the original value of the service-and supply contract, and 15% of the original value of a work contract. When revisions are made in a row, each following the other, their value shall be evaluated based on the aggregate value of revisions.

It is not permitted to make provisions for changes according to sub-paragraphs-a, -c and -f of paragraph 1 that constitute changes in the nature of the contract or the framework agreement as a whole. With respect to the calculation of the value that is mentioned in sub-paragraphs-b, -c and -f of paragraph 1, it shall be based on an updated price when the contract contains provisions on price increase compensation.

If the contracting authority decides to revise the contract in accordance with the conditions that are mentioned in sub-paragraphs-b, -c of paragraph 1 an official notice must be published announcing that the contract has been changed.

A change of a contract or of a framework agreement during the period of validity shall be considered substantial in the meaning of sub-paragraph-e of paragraph 1 when the subject matter of the contract is different from what is was originally. A change shall always be considered substantial if one of the following conditions is present:

- a. The change would have made it possible for more tenderers to participate in the original procurement procedure if that change had been present at the beginning
- b. There is a change in the financial balance of a contract or a framework agreement for the benefit of an economic operator that was not anticipated in the original contract or framework agreement.

- c. The change expands significantly the scope of application of a contract or framework agreement.
- d. If another economic operator replaces the one that the contracting authority awarded the original contract in other instances that what is laid down in sub-paragraph-d of paragraph 1.

New procurement procedures must be initiated if other changes are to be made to the contract, or to a framework agreement during its term of validity than what is stated in paragraph 1.

#### Article 91.

##### *Termination of a contract*

The contracting authority may terminate a public contract unilaterally during its term of validity under the following circumstances:

- a. If there is a significant change that has been made to the contract which should have resulted in the beginning of new procurement procedures Article 90.
- b. If an economic operator that was originally selected, should have been excluded from the procurement procedures, cf. paragraphs 1 and 2 of Article 68.
- c. If an economic operator should not have been awarded a contract in view of a serious violation of this Act or of regulations issued according to this Act.

### **VIII. CHAPTER**

#### **Special rules regarding social services and other special services**

##### Article 92.

##### *The awarding of contracts for social services and other special services.*

Public contracts for social services and other special services shall be made in accordance with this chapter if the value of the contracts exceeds the threshold amounts according to paragraph 4 of Article 23. The contracting authority may use any procurement method that is described in this Act, but must determine it in advance and publish a notice in accordance with the rules according to Article 93.

The provisions of Chapters XI and XII apply to procurement according to paragraph 1 of But other than what is stated here in this chapter, this Act shall not cover such procurement unless otherwise stated.

##### Article 93.

##### *Publication of notices*

A contracting authority who intends to award a public contract for services, cf. Article 92 shall disclose his intent in the following manner:

- a. by way of a special contract notice, or
- b. by special pre-notice. The pre-notice refers in particular to the type of service that the contracts are to be awarded for. It must state that the contracts will be awarded without

further publication and interested parties will be invited to make their interest known in writing. The period covered by the prior information notice shall be a maximum of 36 months from the date the notice is transmitted for publication.

Notwithstanding paragraph 1 the contracting party may start negotiated procedure without prior notice in accordance with Article 39.

The contracting authority shall inform of the conclusion of the procurement proceedings by way of notice of the awarding of the contract. Notices may be gathered and then sent every quarter. Such notices shall be sent within 30 days from the end of each quarter. Notices shall be dispatched to the Publications Office of the European Union, which will carry out their publication, cf. Article 56.

Announcements and notices according to paragraphs 1 and 3 shall be published in accordance with standard forms according to Article 56. Contract notices according to sub-paragraph-a of paragraph 1 shall at the same time be announced by electronic means domestically in a joint forum which the minister lays down in regulations.

#### Article 94.

##### *Main principles for the selection of tenders*

When selecting tenders the contracting authority shall take into account the main principles for procurement according to Article 15. The contracting authority may at all times take into account the special characteristics of the service and then use such characteristics when selecting the tenders. For that purpose he may during the process of awarding take account of i.a. the necessary quality of the service, efficiency, innovation, special needs of different categories of users of the service, and the involvement and empowerment of the users. The contracting authority is also free to select a service provider on the basis of the tender which offers the best ratio between price and quality taking into account the quality and the sustainability criteria for social services.

#### Article 95.

##### *Restrictions to involvement in procurement procedures regarding certain services*

The contracting authority may restrict the right to participate in the procurement procedures for public contracts in the fields of health services, social services and cultural services according to Article 92. The minister shall lay down in regulations which services may be restricted access according to this Article.

It is only permitted to limit the right to participate according to paragraph 1, to economic operators or associations that meet all the following conditions:

- a. have as the objective to provide the public service mentioned in paragraph 1,
- b. profits are re-invested in the interest of the objectives of the economic operator; if profits are distributed or re-distributed it is on the condition that this will be based on aspects regarding participation.
- c. the organisation, or the ownership of the economic operator that executes the contract is based on the main principles of employee ownership, or participation, or that it requires the active participation of the employees, users or interesting parties, and
- d. the relevant contracting authority has not awarded a contract to the economic operator for the relevant services according to this Article during the last three years.

The maximum period of validity of the contract shall not exceed three years.  
The contract notice shall refer to this Article.

## **IX. CHAPTER** **Reports, EFTA Surveillance Authority, etc.**

### Article 96.

#### *Reporting for procurement exceeding EEA threshold amounts*

For each contract or framework agreement, and every time that a dynamic purchasing system is established which exceeds the threshold amounts according to paragraph 4 of Article 23, the buyer shall prepare a written report where the following shall be included:

- a. the name and address of the contracting authority and the content and value of the contract, framework agreement, or a dynamic purchasing system,
- b. the results of a pre-selection process according to Article 78, i.e. the names of economic operators that were selected and the reasons for their being selected, and the names of economic operators that were dismissed and the reasons for their dismissal,
- c. reasons for the dismissal of tenders that turned out to be unnaturally low,
- d. the name of the tenderer who was selected, the reasons for his tender being selected, and which parts of the contract or the framework agreement the contractor who was selected intends to get third party to work as a sub-contractor, including the names of the principal contractor's sub-contractors, if it is known
- e. in a competitive procedure and in ,competitive dialogue, that the conditions of paragraph 2 of Article 33 are in place including the arguments for the use of the procurement procedures,
- f. in negotiated procedure without prior notice taking place, that the conditions laid down in Article 39 are in place including argumentation for the use of the procurement procedure,
- g. as the case may be, the reasons for contracting authority deciding not to award a contract or framework agreement, or establish a dynamic purchasing system,
- h. as the case may be, the reasons for using other communication methods than electronic for the submission of tenders,
- i. as the case may be, conflicts of interest that have been identified and measures that have been taken because of these.

The report does not need to be made regarding contracts that are based on framework agreements made in accordance with paragraph 4, or the first sentence of paragraph 5 of Article 40. To the extent that a notice concerning the awarding of a contract according to Article 84, or paragraph 3 of Article 93, contains information that is required according to this paragraph, the contracting authority may refer to that notice.

The contracting authority shall record the progression of all procurement procedures whether these are electronic or not. For that purpose the contracting authority shall make sure that sufficient documents are kept in order to substantiate any decisions that are taken during all stages of the procurement procedures, such as documents regarding relations with

economic operators and internal discussions, the preparation of the procurement documents, dialogue or negotiations, if any, the awarding and making of the contract. The documents shall be stored for at least three years from the date of a decision on awarding the contract.

The contract report, or the principal parts of the report, shall be sent to the Ministry, or as the case may be, to the EFTA Surveillance Authority, if this is requested.

#### Article 97.

##### *Reports on public procurement exceeding EEA threshold amounts*

The Ministry of Finance shall prepare a report in accordance with Articles 83 and 85 of the Directive and forward it to the EFTA Surveillance Authority (ESA). Further provisions may be established through regulations with respect to which parties shall send reports on their procurements to the Ministry and the information which shall be included in those reports.

#### Article 98.

##### *Inquiry by the EFTA Surveillance Authority regarding procurement exceeding EEA threshold amounts*

The EFTA Surveillance Authority may resort to the procedures laid down in paragraphs 2-4 if the Authority is of the opinion that, prior to the awarding of a contract exceeding threshold amounts according to paragraph 4 of Article 23, that during the implementation of procurement procedures that are subject to the Directive as it has been adopted in the EEA agreement, a serious violation was committed of the rules of the EEA agreement on public procurement. The minister shall be the representative for the Icelandic state during these procedures. For the purpose of this procedure the minister may temporarily stop a tendering process or other procurement procedures after the notice from the EFTA Surveillance Authority has been received.

The EFTA Surveillance Authority notifies the Icelandic state about the reasons why the Authority thinks that a serious violation has taken place and it requests that this be rectified in the proper way. No later than 21 days after the notice is received the Ministry shall send a confirmation to the Surveillance Authority that the violation has been remedied, a reasoned submission on the reasons why no corrections have been made or that a notice that the procurement procedures and the awarding of the contract have been suspended temporarily, whether at the behest of the minister or the Procurement Complaints Commission.

A written statement on the reasons for why no corrections have been made may be grounded in the violation already being deliberated by the Public Procurement Complaints Commission, or being processed in the courts of law, or that the administrative act by the Public Procurement Complaints Commission having been referred to the courts for judicial review. Under these circumstances the Ministry shall notify the EFTA Surveillance Authority on the conclusion in such a case as soon as it has become known.

When the temporary suspension of the procurement procedures has been announced, cf. paragraph 2, the Ministry shall notify the EFTA Surveillance Authority when the temporary suspension has been lifted, or when the procurement procedures for the same procurement, in part or in whole, commence again. This notice must indicate that remedial action has been taken, or reasons must be given for why this has not been done.

## **X. CHAPTER**

### **The activities of the central administration of public procurement**

#### Article 99.



### *The State Trading Centre*

The State Trading Centre is a central purchasing body operated by the state and subject to the authority of the minister. The General Manager of the State Trading Centre is the head of the centre and is appointed by the minister for a term of five years. The General Manager shall prepare the budget for the Centre and shall formulate policies for the principal points of emphasis, tasks and procedures of the Centre.

The State Trading Centre shall in a transparent and efficient manner be responsible for procurements for State institutions, shall examine joint needs for supplies and services and shall arrange joint procurements for state needs and promote the development of efficient procurement systems. Moreover, the Centre shall provide assistance and instructions on tenders and procurement as necessary. In the event of a dispute between the State Trading Centre, as the co-ordinator of tenders, and a contracting authority on a decision for the selection of tenders, the dispute may be referred to the Ministry of Finance.

The State Trading Centre shall prepare framework agreements on behalf of the State, where there shall be an evaluation of the competence, price and as the case may be, the quantity of procurement, and supervise tendering processes and other procurement procedures carried out by State institutions for procurements, whether over domestic threshold amounts or threshold amounts for the European Economic Area, according to Article 23. The Minister, however, may authorise individual State institutions to handle their own procurements above the threshold amounts.

Other public bodies that are subject to this Act may at the same time make use of the services of the State Trading Centre.

The minister may commission The State Trading Centre to manage other tasks that are closely related to the activities of the Centre according to further decision.

### Article 100.

#### *Legitimacy of procurements and responsibility for procurements carried out by the State Trading Centre*

A contracting authority which has obtained a work, product or service through the State Trading Centre is considered to have met its obligations pursuant to this Act insofar as the State Trading Centre has done so.

Prior to the beginning of a procurement procedure carried out by the State Trading Centre, the Centre may demand the conclusion of a contract which provides for, among other things, decision making and liability with respect to the procurement procedure.

### Article 101.

#### *Tariff of the State Trading Centre*

The State Trading Centre sells its services to State institutions and other public bodies in accordance with a tariff established by the Minister pursuant to the recommendations of the General Manager of the State Trading Centre. The tariff shall be based on providing the Agency with sufficient income to cover its operations.

The Minister may enter into an agreement with The State Trading Centre on the performance and financing of projects, i.a. for joint procurements and framework agreements.

### Article 102.

#### *Party responsible for procurements*

Ministries, institutions and concerns owned by the State shall appoint a specific employee to be the party responsible for procurements. That employee is under obligation to oversee that the procurements of the ministry, institution or concern in question are in accordance with applicable laws and regulations on public procurement and State procurement policy.

## **XI. CHAPTER**

### **The Public Procurement Complaints Commission**

#### Article 103.

##### *The role and composition of the Public Procurement Complaints Commission*

The Public Procurement Complaints Commission consists of three persons and the same number of alternates appointed by the Minister following nominations by the Supreme Court for a term of four years. Two members of the Commission and their alternates shall fulfil the legal requirements in to hold the office of a district judge, and one of these shall be the chairman of the Commission. The third member of the Commission and his alternate member shall have extensive experience and knowledge of commerce. The members of the Commission shall be independent of the interest of the state and of other public bodies.

The role of the Public Procurement Complaints Commission is to resolve in an expedient and impartial way the complaints of economic operators for alleged violations of this Act and regulations issued on the basis of the Act, including regarding the general procurement by public bodies, procurements in the fields of defence and security, the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and the awarding of concessions.

The Commission is independent in its activities. Its rulings and decisions as provided for in this Act may not be referred to other public authorities.

At the request of the Ministry, or of a specific contracting authority, the Public Procurement Complaints Commission may deliver an advisory opinion on particular procurements even in the absence of any complaint.

The Public Procurement Complaints Commission takes up for review the legality of the procurements of those public bodies that the Act covers, cf. Article 3.

#### Article 104.

##### *The composition of the Public Procurement Complaints Commission in individual cases and expert advice*

In cases involving significant interests, or that are otherwise considered important from the viewpoint of the public interest the chairman can decide that the commission be composed of two additional members to the permanent commission members. At least one of these shall fulfil the legal requirements for holding the office of a district judge, and they shall be commissioned to handle the case after having been appointed by the Supreme Court of Iceland.

The Chairman can decide to summon expert parties for advice and assistance. They shall work with the Commission according to a further decision by the Chairman who also determines their fees.

#### Article 105.

##### *Right of referral*

Complaints may be referred to the Commission by economic operators who enjoy rights as provided for by this Act and have legitimate interests in the resolution of the complaint. Also

organisations or federations of economic operators have the authority to refer cases to the commission, provided that it conforms to their purpose to guard such interests.

In the case of an alleged violation of an obligation to use statutory procurement procedures, or announce procurement, legally protected interests are however not a requirement. The minister may also lodge a complaint relating to such violations irrespective of legally protected interests.

A complainant may transfer the right to lodge a complaint to an association or organisation that safeguards his interests.

#### Article 106.

##### *Time limit for lodging a complaint*

A written complaint shall be referred to the Public Procurement Complaints Commission within 20 days from the time when the complainant knew or should have known of the decision, act or omission which he believes infringes his rights. A complaint about the inactivity of a contract may however be referred to the Commission within 30 days from the above mentioned time limit. However, a demand for the inactivity of a contract will not be posed when six months have passed from the awarding of that contract. At the further decision of the time limit the following shall apply:

1. When a complaint is lodged regarding a decision on the selection of a tender, or other decisions according to paragraphs 1 and 2 of Article 85 then the beginning of the deadline shall be based on the publication of the notices that are mentioned there, provided that they contain the relevant information.
2. When there is a claim regarding the inactivity of a contract that has been awarded without prior contract notice the beginning of the deadline shall be based on the following publication of a notice on the awarding of a contract in the Official Journal of the European Union provided there is the reasoning for the decision of the contracting authority not to advertise the procurement.

The complaint shall include information on the complainant, the party against which the complaint is directed, and the decision, action or failure to act which is the grounds for the complaint. A complaint must state the claims of the complainant together with a brief description of the circumstances of the case, arguments and reasoning. Claims made by the complainant shall be subjected to the Commission's remedies available according to this Act. The complainant shall notify the contracting authority of a complaint as soon as possible.

If a complaint does not fulfil the conditions of paragraph 2, the Complaints Commission shall request that the complainant remedy the deficiencies within a reasonable time limit. If the complainant fails to do so, the Complaints Commission shall dismiss the complaint.

The Complaints Commission may, as a rule, invite a complainant to submit further documentation or information to explain a complaint, if it feels the complaint is not sufficiently clear, and may grant him a certain time limit for such purpose.

For each complaint there is a complaints fee of ISK 150.000.

#### Article 107.

##### *The legal implications of a complaint*

If a complaint regarding a decision to award a contract is lodged within the statutory standstill period, according to Article 86, then the awarding of the contract is not permitted

until the Complaints Commission has finally resolved the complaint. The automatic stop of the awarding of the contract because of a complaint becomes activated when the contracting authority should know about the complaint, whether it is because of the notice from the complainant according to paragraph 2 of Article 106, or because of the notice from the Complaints Commission according to paragraph 1 of Article 108.

The Complaints Commission can, whether according to the demand of the defendant, or by the own initiative, decide to lift the prohibition on the awarding of the contract. Under such decision the provisions of Article 110 are in effect as the case may be. The decision of the Complaints Commission to lift the prohibition on awarding the contract shall never enter into effect until the standstill period for the awarding has passed according to Article 86.

Otherwise it follows from paragraph 1 that a complaint does not entail the automatic stop of the procurement procedures.

#### Article 108.

##### *Processing of the complaint and pre-trial evidence gathering*

Should a complaint be acceptable for process on the merits, as provided for in Article 106, the Commission shall grant the defendant party against which the complaint is directed an opportunity to express itself on the substance of the complaint.

The complainant shall generally be allowed a short time limit to address the comments made by the defendant party and those of others who have been provided with the opportunity to make a statement.

The pleadings shall be conducted in writing, but the Commission may give the parties an opportunity to present verbal comments. In the event that a case is brought before the Public Procurement complaints Commission where it is necessary to take a position regarding clarification of the EEA agreement, its protocols, Annexes, or acts mentioned in the Annexes, then the Commission can in accordance with Article 40 of the EFTA agreement on the establishment of a Surveillance Authority and Court, pronounce a ruling declaring that an advisory opinion by the EFTA court will be asked concerning clarification of that aspect of the case before the matter is concluded. Whether or not a party to the case demands that such opinion be sought or the Commission thinks that there is a need for this, the parties must be given the opportunity to express themselves before a ruling is rendered.

The Commission can demand that the parties submit all the evidence and other information pertaining to the case. If the complainant does not act on such a demand his complaint may then be dismissed immediately. If the defendant does not act on such a demand his negligence may then be construed in his disfavour.

The number of votes from the Commission members will decide the outcome of the case. The minority vote shall accompany the Commission opinion, if applicable. The chairman or the vice chairman is in charge of the Commission's work. When the Commission members do not agree on a conclusion the majority shall decide on the conclusion of a case. If the commission is split in three in its position, or if the conclusion can not be decided by the number of votes, the vote of the chairman will decide.

The Complaints Commission shall rule on a complaint as soon as possible, and no later than one month after it has received the comments from the complainant according to paragraph 3 if that is the case.

The processing of complaints before the Commission shall otherwise be governed by the Administrative Procedures Act.

#### Article 109.

### *Defendant*

The defendant in the case shall be the contracting authority or several defendants jointly, as the case may be. If the State Trading Centre or other central purchasing body in the meaning of this Act has conducted procurement then that body is also considered a defendant in a case before the Commission. The contracting authority may delegate to a central purchasing body the representation in the processing of a case before the Public Procurement Complaints Commission.

If another contracting authority, such as another tenderer in a tendering process, or a participant in a pre-selection process for restricted procedures, in competitive dialogue, or in negotiated procedure, has legitimate interests attached to the outcome of a case before the Commission, and this shall then be considered to be in the defence of that party.

### Article 110.

#### *Temporary suspension of procurement procedures or contract procedures*

At the demand of the complainant the Public Procurement Complaints Commission may suspend procurement procedures temporarily until there is a final decision regarding a complaint, provided that there has been shown a significant probability of violation of this Act regarding a particular procurement that may result in the invalidation of a ruling or other actions by the defendant. The same applies to violations of rules that have been issued according to the Act. When evaluating whether or not to suspend temporarily the awarding the private and public interests involved may be taken into account, and reject the demand if these interests are not considered more than the interests of the contracting authority to have a finding in favour of the demand.

The provisions of Articles 106 and 108 apply to the demand of the complainant, as the case may be. The deadline for the defendant to express himself on the demand by the complainant shall however be short and it is permitted to waive these deadlines if there is a clear and obvious violation. A party to a case may demand that the Commission present reasoning in writing for a decision according to this Article if the reasoning has not accompanied the decision when it was pronounced.

The Complaints Commission may decide in its rules of procedure according to Article 113 that the chairman of the Commission alone will take decisions according to this Article.

A rejection of a demand to suspend temporarily will not have an effect on other demands that the complainant may present regarding procurements.

### Article 111.

#### *Remedies available to the Public Procurement Complaints Commission*

The Commission may issue a ruling which repeals a decision made by the contracting authority regarding public procurement, partially or totally, declare a contract to be inoperative according to the further provisions of Articles 115 - 117, or may provide for other sanctions according to Article 118. The Commission may instruct the contracting authority to put certain procurements out to tender, re-advertise a tender or alter a tender notice, tender description or other aspect of the tender documents.

The Commission may express its opinion on the liability of the defendant for damages towards the complainant, but shall not express itself concerning the amount of damages.

The Commission may decide that the defendant shall pay the complainant the cost of lodging the complaint. If a complaint is clearly unjustified or lodged for the purpose of delaying the progress of public procurements, the Commission may rule that the complainant shall pay the legal costs of the case, which shall accrue to the Treasury.

If a ruling of the Commission, as provided for in the first paragraph, is not complied with, the Commission may levy per diem fines on the party at which the ruling is directed. Fines may amount to up to ISK 500,000 for each day which elapses without compliance with the Committee's ruling. If a ruling is referred to a court, the per diem fines shall not commence until final judgement is pronounced.

Per Diem fines pursuant to paragraph 4 shall accrue to the Treasury. Per diem fines and rulings on legal costs, are enforceable by execution without prior court judgement as provided for in paragraph 3 of

The provisions of paragraph 2 of Article 24 of the Act on Attachment of Property, Restraining Orders etc. shall not prevent that a restraining order is granted to forbid an action that would violate the ruling of the Public Procurement Complaints Commission.

#### Article 112.

##### *Legal action for the invalidation of the rulings of the Public Procurement Complaints Commission*

In the event that a complainant, a defendant or another party with legitimate interests to protect is dissatisfied with the ruling of the Public Procurement Complaints Commission, such party may initiate proceedings to invalidate such a ruling before a court of law. Such proceedings shall be initiated within six months from the date that the party obtained, or could obtain, knowledge of the Commission's ruling.

In the event that proceedings are initiated for the invalidation of a ruling of the Public Procurement Complaints Commission, the Commission shall not be summoned for defence. In other respects, defence involvement in such cases shall be governed by general rules of law.

#### Article 113.

##### *Rules of procedure for the Public Procurement Complaints Commission, etc.*

The Public Procurement Complaints Commission may establish further rules, which must be approved by the Minister, on the submission of documents, procedures before the Commission and publication of its rulings.

## **XII. CHAPTER**

### **Contract validity, inactivity, other sanctions and damages.**

#### Article 114.

##### *Contract validity*

After a binding contract according to this Act has been concluded, it shall not be invalidated or altered, even though the decision by the contracting authority on the tendering or awarding of the contract may have been contrary to law.

In other respects, the validity of contracts awarded under this Act shall be subject to general principles of commercial law.

The provisions of this chapter on the inactivity of contracts will be applied irrespective of the validity, according to paragraph 2 of

#### Article 115.

##### *Inactivity of contracts*

The Public Procurement Complaints Commission may declare that a contract is inactive according to the provisions of this Article, but however only a contract which exceeds the threshold amount according to paragraph 4 of Article 23. A ruling for the inactivity of a contract has the effect that rights and obligations according to the primary subject matter of the contract is set aside. The inactivity of a contract shall be limited to the payments that still have not been made. With respect to payments that already have been made the Complaints Commission shall make provisions for other sanctions according to Article 118. The Complaints Commission shall specify from which point in time the contract is declared inactive, or which further sections of the contract are inactive.

The Public Procurement Complaints Commission shall declare a contract to be inactive in the following instances:

- a. When a contract, including a contract that comes under rules on the awarding of concession contracts for works and design competitions, has been awarded without duly authorised advertisement in contradiction to this present Act, or rules issued according to this Act.
- b. When a contract has been awarded during the standstill period according to Article 86, or while there is a temporary halt in the negotiations, according to Article 107, so that
  1. the complainant was unable to seek remedial action through making a complaint prior to the awarding of the contract,
  2. it is on the record that there has been a violation of this Act, or of rules issued according to this Act, and
  3. the nature of the violation was such that the violation could affect the complainant's possibilities to be awarded the contract
- c. When a contract, exceeding the threshold amounts, according to paragraph 4 of Article 23, has been awarded on the basis of the framework agreement contravening the provisions of paragraph 5 of Article 40, or through a dynamic purchasing systems according to paragraph 5 of Article 41.
- d. When a contract has been awarded although procurement procedures, a tendering process or the awarding has been temporarily suspended by the Public Procurement Complaints Commission according to Article 110.

#### Article 116.

##### *Exemptions from inactive contracts following non-obligatory notice*

A contract shall not be declared inactive if all the following requirements are fulfilled.

- a. Procurement is regarded permissible without prior publication of contract notice.
- b. The contracting authority has published a notice according to paragraph 3 to the effect that he intends to award a contract for procurement.
- c. A contract has been awarded upon the completion of the stand-still period which is a minimum of ten days from the publishing of the notice.

A contract that has been awarded on the basis of a framework agreement or an active procurement system shall not be declared to be inactive if all the following conditions are met.

- a. The provisions of paragraph 5 are regarded as having been met under Article 40, and paragraph 5 of Article 41.
- b. The contracting authority has sent a notice regarding the selection of a tender, according to Article 85, to the tenderers with interests.
- c. A contract has been awarded following the expiry of the stand-still period according to Article 86.

In the contracting authority's notice stating that he intends to award a procurement contract, cf. sub paragraph-b of paragraph 1, there must be an account of the contracting authority, the content of the contract, the expected counterpart and the reasons for it being permitted to award a contract without prior notice of tender. In addition other relevant information must be included as the case may be. The publication of notices shall in other respects comply with the rules concerning general public tender notices and their publication, cf. Article 55, as applicable.

#### Article 117.

##### *General provision to derogate from inactive contracts*

If the Public Procurement Complaints Commission finds that there is an urgent public interest which makes the continuation of the execution of the contract necessary, and it may then decline the inactivity although the conditions of Article 116 have been met. The Complaints Commission may i.a. permit the continuation of the execution of the contract for a specified period of time which takes into account that the contracting authority has had a chance to complete a new procurement procedure regarding the same procurement within a fixed period of time. If the Complaints Commission applies this authorisation it must provide for other sanctions according to Article 118.

Financial interests in having the contract executed shall only be considered to be urgent in exceptional circumstances when the consequences of an inactive contract would be excessive. Financial interests that are connected with the contract itself is not considered urgent public interest, e.g. cost of delays in the implementation of the subject matter of the contract, the cost of a new procurement procedure, the cost relating to a counterpart, or cost relating to the legal consequences of the inactivity of a contract.

The Public Procurement Complaints Commission shall annually send to the EFTA Surveillance Authority a copy of all rulings where the authority according to paragraph 1 has been applied.

#### Article 118.

##### *Other sanctions: Administrative fines and shortening the contract period*

The Public Procurement Complaints Commission shall impose administrative fines on the contracting authority for a contract that exceeds the threshold amounts according to paragraph 4 of Article 23 in the following instances:



- a. When a contract has been awarded during the standstill period according to Article 86, or while the contract award procedure was suspended according to paragraph 1 of Article 107, or Article 110, but the conditions for inactivity were not met.
- b. When a contract is not declared inactive from the outset, or only partially, cf. paragraph 1 of Article 115.
- c. When inactivity is declined, in part or in total, with reference to urgent public interest, cf. Article 117.

When more contracting authorities are involved in joint procurement, a fine must be determined for each single contracting authority. The same applies if the State Trading Centre, or other central purchasing body has carried out procurements. An administrative fine shall amount to up to 10% of the estimated value of a contract. When determining the amount of fines the nature and scope of the violation must be taken into consideration, as well as the contract authority's track record, and whether and to what extent the contract has been kept active.

The Directorate of Customs shall carry out the collection of administrative fines which shall accrue to the Treasury. The fines are due one month from the rendering of the ruling. Per Diem fines are enforceable by execution without prior court judgement. The Public Procurement Complaints Commission shall notify the Directorate of Customs regarding the rendering of a ruling on an administrative fine.

The Public Procurement Complaints Commission may shorten the period of validity of the contract instead of imposing an administrative fine, in part or in whole, if it is found that such a decision is proportionate to the nature of the violation and that it will have sufficient deterrent effect.

#### Article 119.

##### *Liability*

A contracting authority is liable for damages that violations of this Act, including the provisions of the Directive referred to in the Act, and rules established herein, may cause to economic operators. An economic operator need only prove that it had a realistic possibility of winning a contract and that this possibility was prejudiced by the violation. The amount of compensation shall be based on the cost of preparing a tender and participating in the tender procedure.

In other respects, damages resulting from violations of this Act and rules established hereunder shall be governed by general rules of law.

### **XIII. CHAPTER**

#### **Conflict of laws, entry into effect, repealed Acts, etc.**

##### Article 120.

##### *Introduction*

This Act provides for the adoption of the Directive of the European Parliament and of the Council 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and Directive of the European Parliament and of the Council 2007/66/EC of 11 December 2007 on the amendment of Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

This Act also provides for the adoption of the Directive of the European Parliament and of

the Council 2009/81/EC 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, the Directive of the European Parliament and of the Council 2014/23/EU from 26 February 2014 on the award of concession contracts, and the Directive of the European Parliament and of the Council 2014/25/EEC from 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

#### Article 121.

##### *Position of the Administrative Procedures Act with respect to public procurement*

Provisions of Chapter II of the Administrative Procedures Act on eligibility, applies to decisions made in accordance with this Act. Otherwise, the provisions of the Administrative Procedures Act do not apply to decisions made according to this Act.

#### Article 122.

##### *Authority to issue regulations*

The minister may by issuing regulations lay down further implementation of this Act, including:

1. Joint procurement by contracting authorities, cf. Article 19.
2. The implementation of procurement in another state of the European Economic Area, cf. Article 20.
3. Rules for the implementation of the World Trade Organisation agreement on public procurement and other international treaties on government procurement to which the Icelandic Government is bound.
4. Common Procurement Vocabulary, cf. Article 21.
5. Requirements for devices and equipment for electronic receipt of tenders and requests for participation, cf. Article 22.
6. The maximum value of individual contract sections which it is permitted to award without putting up for bids, when procurement is subdivided into separate contracts, cf. paragraph 2 of Article 29.
7. Information that must be included in the procurement documents for electronic auctions, cf. Article 42.
8. Information that must be stated in an advertisement and notification for the results of the design competition, cf. Article 44.
9. Rules on the preparation and submission of tender submission forms. Articles 47 and 48.
10. Information that must be included in the prior information notice and publication of such notices, cf. Articles 54, 55 and 56.

11. The contents of an offer to submit a tender, to participate in dialogue, or to confirm interest, cf. Article 61.
12. Opening of tenders by electronic means, cf. Article 65.
13. A relevant certificate for the business licences of economic operators from other states of the EEA, cf. Article 70.
14. Requirements that are made regarding proof of financial standing and technical capacity of an economic operator, cf. Article 74.
15. Information concerning the format and contents of notices of awarded contract exceeding the threshold amounts of the EEA, cf. Article 84.
16. Information that must be included in notices concerning amendments to a contract during its period of validity, cf. Article 90.
17. Service that comes under social services and other specialised services, cf. Article 92.
18. Information that must be included in the pre-advertising, the contract notification, advertisement for the awarding of a contract for social services and other special services, cf. Article 93.

#### Article 123.

##### *Entry into force and conflict of laws*

This Act shall enter into effect immediately.

Upon the entry into force of this Act, [the Act on public procurement No. 84/2007](#), as amended, is repealed.

Notwithstanding paragraph 1, the provisions of paragraphs 1 and 2 of Article 22 shall enter into force on April 18 2017 for centralised procurement agencies, and on 18 October 2018 for other contracting authorities.

Notwithstanding paragraph 1, the provisions of paragraph 1 of Article 23 shall enter into force on 31 May 2019 with respect to procurements made by local authorities, their institutions and other contracting authorities on their behalf.

Procurements made by local authorities, their institutions and other contracting authorities on their behalf that exceed threshold amounts according to paragraph 1 of Article 23 shall be advertised publicly in accordance with the provisions of Article 55 from 1 January 2017 until the general obligation to call for tenders enters into force on 31 May 2019.

Procurements already advertised prior to the entry into force of this Act shall be governed by [the Act on public procurement No. 84/2007](#). Account shall be taken of the official publication of the contract notice, or the estimated receipt by participants of the notice, in the event of procurement procedures where contract notices are not publicly published.

This Act applies to the Public Procurement Complaints Commission's processing of complaints submitted to the Commission after the entry into effect of this Act.