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**Act No. 84/2007
on Public Procurement**

TITLE 1

**General provisions
CHAPTER I**

Purpose, definition and scope of application

Article 1

The purpose of the Act

The purpose of this Act is to ensure the equal treatment of companies during public procurement, encourage efficiency in public operations through active competition and promote innovation and development in the public procurement of goods, labour and services.

Article 2

Definitions

The definition of terms in this Act is as follows:

1. *Public telecommunications services*: Telecommunications services the provision of which the authorities have specifically assigned, in particular, to one or more telecommunications entities.
2. *Public telecommunications network*: A public telecommunications infrastructure which enables signals to be conveyed between defined network termination points by wire, by microwave, by optical means or other electromagnetic means.
3. *Open procedure*: Procurement procedure in which any economic operator may submit a tender.
4. *Tenderer*: An economic operator that has submitted a tender in an open, restricted or negotiated procedure, or competitive dialogue.
5. *Telecommunications services*: Services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of broadcasting and television.
6. *Economic operator*: This term covers equally the concepts of contractor, supplier and service provider. It is used merely in the interest of simplification.
7. *Dynamic purchasing system*: A completely 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 which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.
8. *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.
9. *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.
10. *Central purchasing body*: A contracting authority as defined in Article 3 which acquires supplies and/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. *Network termination point*: All physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network.
12. *Contracting authority or purchaser*: The State, local authorities, their institutions and organisations and other public entities as specified in Article 3.
13. *Public contracts*: All contracts covered by Paragraph 1 of Article 4.

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14. *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.
15. *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.
16. *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.
17. *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.
18. *Common Procurement Vocabulary*: System used to designate the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002, while ensuring equivalence with the other existing nomenclatures. In the event of varying interpretations of the scope of this Act, owing to possible differences between the CPV and NACE nomenclatures listed in Annex I of the Directive, or between the CPV and CPC (provisional version) nomenclatures listed in Annex II of the Directive, the NACE or the CPC nomenclature respectively shall take precedence.
19. *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.
20. *Negotiated procedure*: A procedure whereby the contracting authority consults the economic operators of their choice and negotiates the terms of contract with one or more of them.
21. *Works concession*: A contract in which the consideration for the works to be carried out consists either solely in the right to exploit the work or in this right together with payment from the contracting authority.
22. *Service concession*: A contract in which the consideration for the provision of services consists either solely in the right to exploit the work or in this right together with payment from the contracting authority.
23. *Standard*: A standard approved by a recognised standardisation organisation that may be used repeatedly and regularly without being a mandatory requirement. A standard is a public document and intended for general use.
24. *Directive*: Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the co-ordination of procedures for the award of public works contracts, supply contracts and service contracts as adopted by the EEA Joint Committee Decision 68/2006 as published on 7 September 2006 in an Annex to the Official Journal of the European Union No 44/2006.
25. *Works contracts or public works contracts*: All contracts as specified in Paragraph 2 of Article 4.
26. *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 or services.
27. *Supply contracts or public supply contracts*: All contracts as specified in Paragraph 3 of Article 4.
28. *Candidate*: Any economic operator which has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue.
29. *Service contract or public service contract*: All contracts as specified in Paragraph 4 of Article 4.
30. *Mini-tendering*: A procurement procedure whereby the contracting authority seeks, with appropriate prior notice, written tenders from specific framework agreement contractors concerning terms that were not considered in the respective framework agreement, and which

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generally results in a contract with the tenderer offering the most favourable tender based on the prerequisites as stipulated in the tender conditions of the framework agreement.

Article 3

Public authorities within the scope of this Act

This Act concerns the State, local authorities, their institutions and other public entities, in accordance with Paragraph 2. The Act also concerns 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 meeting needs in the general interest, provided it does not conduct operations that may be compared with the operation of private entities, such as in the field 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.

The public entities listed in Appendix I of the Decision of the EEA Joint Committee No 68/2006, published in the EEA Appendix of the Official Journal of the European Union No 44/2006 of 7 September 2006, shall be considered to be public entities within the scope of this Article.

Article 4

The scope of this Act concerning contracts

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. Work contracts are contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I of the Directive, or a work, or the realisation, by whatever means, of a work 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.

Supply contracts are contracts other than those referred to in Paragraph 2 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 contracts are contracts other than works or supply contracts having as their object the provision of services referred to in Annex II of the Directive. A public contract having as its object both supplies and services within the meaning of Annex II of the Directive shall be considered to be a service contract if the value of the services in question exceeds that of the supplies covered by the contract. A contract having as its object services within the meaning of Annex II of the Directive and including activities within the meaning of Annex I of the Directive that are only incidental to the principal object of the contract shall be considered to be a service contract.

Article 5

Defence contracts

This Act applies to contracts in the field of defence pursuant to Article 123 of the EEA Agreement, unless otherwise provided for by law.

Article 6

Contracts specifically excluded from the scope of this Act

This Act does not apply to service contracts for:

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- a. The acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Act.
- 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. Financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments and central bank services.
- e. Employment contracts.
- f. 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 making of the contracts specified in Paragraph 1.

Article 7

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

This Act does not apply to contracts that are excluded from Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, according to Articles 3 to 7 of that Directive as adopted in the EEA agreement according to the Decision of the EEA Joint Committee No

68/2006 that was published in the EEA Annex to the Official Journal of the European Union No 68/2006 of 7 September 2006, Paragraph 2 Article 5 and Articles 19, 26 and 30 of the same Directive.

The provisions of Chapters XIV and XV of this Act apply to contracts made by contracting authorities that involve one or more types of operation referred to in Articles 3 to 7 of the Directive referred to in Paragraph 1 and made in relation to those operations. In other respects, the present Act does not cover procurements made by such entities.

The Minister may issue regulations further defining the procurements of the entities specified in Paragraph 1 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.

Article 8

Contracts in the field of telecommunications

This Act does not apply to contracts for the principal purpose of establishing or operating public telecommunications networks or to provide to the public one or more telecommunications services.

Article 9

Secret contracts and contracts requiring special security measures

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

Article 10

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 or works intended for the joint implementation or exploitation of a work for the states, or services intended for the joint implementation or exploitation of a project by the states,

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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 made pursuant to the particular procurement procedures of international organisations.

Article 11

Service concessions

Without prejudice to Article 14, this Act does not apply to service concessions. However, the Minister may, by means of a regulation, establish rules on the preparation of service concessions for services with respect to the State and State institutions.

Article 12

Contracts awarded on the basis of an exclusive right

This Act does not apply to public service contracts awarded to entities or economic operators which 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.

Article 13

Funding by contracting authorities

The provisions of this Act apply to contracts with a value of EUR 6,242,000 or more, excluding value added tax, where the economic operator pays more than 50% when the contract relates to building construction or other structures as defined in Appendix I of the Directive, or when a contract includes construction work for a hospital, sports and recreation facility, school or university or a building used for public administration. The provisions of this Act also apply when a service contract is made with a value of EUR 249,000 or more, excluding value added tax, which the economic operator subsidises by more than 50% and which is connected to a work contract that is covered by Paragraph 1.

The respective contracting authority shall ensure compliance with this Act wherein another entity makes a contract covered by Paragraphs 1 or 2. The same applies if a contracting authority awards a contract on behalf of such an entity or is responsible for awarding the contract.

CHAPTER II General provisions

Article 14

Equality of economic operators on awarding contracts

Equality and transparency must be maintained during public procurement. Discrimination on grounds of nationality or other similar reasons is prohibited.

Stipulating in procurement documents that a 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 15

Holders of rights according to the Act

Rights according to the present Act are enjoyed by economic operators domiciled in any of the states in the European Economic Area or in one of the original member states of the European Free Trade Association. However, those economic operators shall never have inferior rights than 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 that the Icelandic State has made.

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Rules may be established, by means of a regulation, for the implementation of the World Trade Organisation agreement on public procurement and other international treaties on government procurement to which the Icelandic Government might become a party.

Article 16

Granting of special or exclusive rights: non-discrimination clause

If an entity other than the contracting authority as defined in this Act is granted special or exclusive rights to carry out a public service, then the act that provides for that right, such as legislation, government regulations or an administrative agreement, shall ensure that the entity complies with the principle of non-discrimination on the basis of nationality in respect of supply contracts in connection with the operation of services.

Article 17

Confidentiality

The contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential. Such information includes, in particular, technical or trade secrets and the confidential aspects of tenders.

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 Paragraph 4 of Article 35 of the Directive, and to informing candidates and tenderers of particular issues as set out in Articles 41 and 71 of the Directive, as well as the obligation to provide information to a tender complaints committee according to Paragraph 5 of Article 95.

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

Article 18

Reserved contracts

It is permitted to reserve the right to participate in public contract award procedures to sheltered workshops or provide for such contracts to be performed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of their disabilities, cannot carry on occupations on the normal employment market.

If the procurement is over the threshold amount for the European Economic Area pursuant to Title 3, reference shall be made to Article 19 of the Directive in the contract notice.

Article 18(a)

Procurement in another EEA-Member State

The Minister may authorize a central purchasing body to put up for tender a procurement, subject to this Act, in another EEA-member state, either in cooperation with foreign purchasers, their associations or representatives, and/or central purchasing bodies or on its own. The authorization shall be granted for each invitation to tender individually, upon the reasoned request of the central purchasing body.

Authorisation shall be granted only if it has been established that the rules of the EEA Agreement on Public Procurement have been transposed into the legislation of the state in question and that there is reason to believe that procurement in that state would further efficiency and active competition as well as other legitimate interests pertaining to public procurement. Procurements conducted on the basis of authorizations granted pursuant to this article shall be governed by the regulations of the relevant state, including rules regarding complaints, validity of purchasing decisions and compensation. The arguments for the purchasing body's request shall contain a special competition assessment. On receipt of the Purchasing body's request the Ministry shall seek the Competition Authority's confirmation of the Purchasing body's competition assessment. Failing such confirmation the procurement shall not take place in accordance with this provision.

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TITLE 2

Public procurement below the threshold amounts of the European Economic Area Chapter III

Scope of this Title

Article 19

The provisions of this Title cover public procurements below the threshold amounts of the European Economic Area as published in regulations in accordance with Article 78. The provisions of this Title do not affect procurements made by local authorities, their institutions, other public entities on their behalf in accordance with Paragraph 2 of Article

3 or associations these entities may have founded with each other. However, these entities may apply the provisions of this Title at any time, in whole or in part, in connection with their procurements. Local authorities shall establish rules with respect to their procurement, provided they have not decided to make procurements in accordance with the rules of this Title as a whole.

The provisions of this Title do not cover works concessions below the threshold amount of the European Economic Area as published in regulations in accordance with to Article 78. However, the Minister may, by means of a regulation, establish further provisions regarding the making of works concessions under those threshold amounts, including deciding that concessions should be established following a specific procurement procedure. With respect to works concession over the abovementioned threshold amounts of the European Economic Area, the provisions of Article 80 shall apply together with the regulations referred to therein. The provisions of Article 37 shall apply to the implementation of design contests.

Chapter IV

Threshold amounts for public procurement under the threshold amounts of the European Economic Area

Article 20

Threshold amounts

Any procurement of goods exceeding 11.500.000 ISK and procurement of servicing exceeding 14.900.000 ISK and tasks exceeding 28.000.000 ISK shall be put up for tender or make in accordance with the procurement procedure stipulated in Chapter V

The amounts defined in Paragraph 1 shall be revised every other year in accordance with changes to the consumer price index, the first revision taking effect on 1 January 2015. These amounts may be rounded up to the next thousand. The Minister shall, with an appropriate notice, make public and official the changes to be made to the threshold amounts according to the present Article.

Article 21

Services that are exempt from tender procedures

Contracts for the procurement of services specified in Annex II B of the Directive are exempt from tender procedures and exempt from the procurement procedures provided for in Chapter V of this Act. However, procurement of these services shall be made at all times with respect to the equality provisions of Article 14 and the provisions of Article 40 on technical specifications.

Contracts which have as their object services listed both in Annex II A of the Directive and in Annex II B of the Directive shall be awarded in accordance with the provisions of this Act regarding tenders and other procurement procedures where the value of the services listed in Annex II A of the Directive is greater than the value of the services listed in Annex II B of the Directive. In other cases, contracts shall be awarded in accordance with Article 40 on technical specifications and the rule of equality provided for in Article 14.

The Minister may, by means of a regulation, stipulate that State institutions and State concerns shall put their procurements out to tender or make them in accordance with procurement procedures provided for in Chapter V of this Act.

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Article 22

Procurement below domestic threshold amounts

When procurement is below the threshold amount as advertised pursuant to Article 20, the contracting authority must at all times ensure efficiency and make comparisons between as many economic operators as possible. Furthermore, such comparisons must be made in writing or using digital methods. These procurements shall be made in compliance with the equality provisions of Article 14 and with Article 40 on technical specifications.

Article 23

Calculating the value of contracts, framework agreements and dynamic purchasing systems

The calculation of the estimated value of a contract shall be based on the total amount payable, net of VAT, as estimated by the contracting authority. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract.

Where the contracting authority provides for additional payments or bonuses to be paid to candidates or tenderers, it shall take them 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 contract awarding procedure.

No works project or purchase of supplies and/or services may be subdivided in order to bring a procurement below the threshold amounts.

Article 24

Calculating the value of work contracts

The calculation of the estimated value of works contracts shall take account of both the cost of the works and the value of the supplies placed at the contractor's disposal by the contracting authorities.

Article 25

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 a supply is 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. When the term of the contract is greater than 12 months, the total value including the estimated residual value.
- 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 26

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, interest and 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

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of a contract shall be based on the estimated contract value for its duration.

- b. For 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 27

Subdivided procurements

Where a procurement of work or purchases of services is subdivided, resulting in several separate contracts being awarded at the same time, 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 that are made at the same time. Where the aggregate value of the lots 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 is over the threshold amount, notwithstanding the provisions of that paragraph, individual contracts may be made for up to 20% of the aggregate value of the contracts without putting them out to tender.

Article 28

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 goods 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 29

Calculating the value of framework agreements and dynamic purchasing systems

With regard to framework agreements and 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.

CHAPTER V Procurement procedures

Article 30

The main principles of open and restricted procedures

In all cases other than those covered by Articles 31 to 33, procurements above the threshold amount specified in Article 20 shall be based on open or restricted tenders according to the provisions of Chapters VI, VII, VIII and IX. Procurements are also permitted based on framework agreements according to Article 34 and on dynamic purchasing systems according to Article 35 even when they exceed the threshold amounts.

Article 31

Competitive dialogue

In the case of particularly complex contracts where the contracting authority considers that the use of the open or restricted procedure will not allow the award of the contract, the contracting authority may apply the provisions of this Article. A “particularly complex contract” in the meaning of this Article is when it is not possible to objectively identify the technical issues that can fulfil the contracting authority’s requirements or objectives, cf. Items b, c and d of Paragraph 3 of Article 40, and/or the contracting authority can not legally

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identify or financially define the structure of the project. A contract shall be awarded on the sole basis of the award criterion for the most economically advantageous tender.

Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document. Contracting authorities shall open, with the candidates selected in accordance with the relevant provisions of Chapter VII and Article 56, 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 by applying the award criteria in the contract notice or the descriptive document. The contract notice or the descriptive document shall indicate that recourse may be had to this option.

The contracting authority shall continue such dialogue until it can identify the solution or solutions, if necessary after comparing them, which are capable of meeting 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. These tenders may be clarified, specified and fine-tuned 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 contract notice or the descriptive document and shall choose the most economically advantageous tender in accordance with Article 72. At the request of the contracting authority, the tenderer identified as having submitted the most economically advantageous tender may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided that this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination. The contracting authorities may specify prices or payments to the participants in the dialogue.

Article 32

Negotiated procedure with prior publication of a contract notice

In the event that no valid tenders are submitted in an open or restricted procedure or competitive dialogue or in the event that all tenders are unacceptable or the candidates or tenderers are rejected on the basis of the provisions of Chapter VII, a negotiated procedure may be applied following the publication of a notice, provided that the original terms of the contract are not substantially altered. Contracting authorities need not publish a contract notice where they include in the negotiated procedure all the tenderers which satisfy the criteria of Chapter VII and which have submitted tenders in accordance with the formal requirements of the tendering procedure.

Contracting authorities may also award contracts, after publication of a contract notice, in the following cases:

- a. When the nature of the works, supplies, or services or the risks attaching thereto do not permit prior overall pricing.
- b. In the case of services, especially intellectual services or research and development, insofar as the nature of the services to be provided is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedure
- c. When works are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

In the cases referred to in Paragraphs 1 and 2, contracting authorities shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements which they have set in the contract notice, the specifications and additional documents, if any, and to seek out the best tender in accordance with Article 72. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In

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particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.

Contracting authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications. The contract notice or the specifications shall indicate that recourse may be had to this option.

Article 33

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 or no applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered.
- b. When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator.
- 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 in accordance with Article 32. 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.

In the case of services procurement, contracting authorities may award contracts by a 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 of the successful candidates. In the latter case, all successful candidates shall be invited to participate in the negotiations.

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

- a. In the case of an additional work 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. The same applies if an additional work is necessary in order to finish an agreed work. The aggregate value of contracts awarded for additional work may not exceed 50% of the amount of the original contract amount.
- b. 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 IV. This procedure may be used only during the three years following the conclusion of the original contract.

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Article 34

Framework agreements

Framework agreement shall be concluded in accordance with the procedures laid down in this Act. The parties to the framework agreement shall be chosen by applying the award criteria set in accordance with Article 72. 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 3 and 4. 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.

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. Contracting authorities may not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

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 several economic operators, the latter must be at least three in number, insofar as there is a sufficient number of economic operators to satisfy the selection criteria and/or of admissible tenders which meet the award criteria.

Where the terms of a framework agreement are decided, a contracting authority may make particular agreements with the contract winner 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 confidential 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 35

Dynamic purchasing systems

Dynamic purchasing systems shall only be set up following an open procedure in accordance with the rules applicable to such procedures. All the tenderers satisfying the requirements of Chapter VII and having submitted an indicative tender which complies with the specification and any possible additional documents are entitled to participation in dynamic purchasing systems. Indicative tenders may be improved at any time provided that they continue to comply with the specification. When a dynamic purchasing system is set up established, contracting authorities shall use solely electronic means in accordance with Paragraphs 2 to 5 of Article 68.

For the purposes of setting up the dynamic purchasing system, contracting authorities shall:

- a. Publish a contract notice making it clear that a dynamic purchasing system is involved.
- b. Indicate in the specification, amongst other matters, 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. Offer by electronic means, on publication of the notice and up to the expiry of the system,

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unrestricted, direct and full access to the specification and to any additional documents and 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. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. They may extend the evaluation period provided that no tender is received in the meantime. The contracting authority shall inform a tenderer seeking admittance to the procurement system at the earliest possible opportunity of its admittance to the dynamic purchasing system or of the rejection of its indicative tender. Each specific contract must be the subject of an invitation to tender. Before issuing the invitation to tender, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, in accordance with Paragraph 3, within a time limit that may not be less than 15 days from the date on which the simplified notice was sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

Contracting authorities shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. To that end, they shall set a time limit for the submission of tenders.

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 for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in a special contract notice related to the specific agreement.

A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases. Contracting authorities may not use a dynamic purchasing system improperly or in such a way as to prevent, restrict or distort competition. No charges may be collected for applications to the system or from parties to the system.

Article 36

Contracts for the design and construction of public housing schemes

In the case of contracts relating to the design and construction of a public housing scheme whose size and complexity, and the estimated duration of the work involved, require that planning be based from the outset on close collaboration within a team comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the works, a special award procedure may be adopted for selecting the contractor most suitable for integration into the team.

Contracting authorities shall include in the contract notice as accurate as possible a description of the works to be carried out so as to enable interested economic operators to form a valid idea of the project. Furthermore, contracting authorities shall, in accordance with the provisions of Chapter VII on the selection of tenderers, set out the personal, technical, economic and financial conditions to be fulfilled by candidates.

Article 37

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 20.

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 33 at the completion of the design contest, the total possible value of the service contract, excluding VAT, plus payments according to Paragraph 1 shall be taken into account. Design contests exceeding the threshold amount, as stated in regulations according to Article 78, are governed by the provisions of Article 81 and the rules referred to therein.

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. The notice or specifications referred to in a notice shall contain information regarding the

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arrangement of the contest, the criteria for choosing participants if their number is limited and the criteria for choosing 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. 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.

Chapter VI

Procurement documents

Article 38

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 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 49 and 50.
- j. Handling of inquiries from prospective tenderers.
- k. Delivery terms.
- l. Language or languages in which the tenders shall be submitted.
- m. Selection criteria.
- n. Whether it is permitted to tender for part of the intended procurement.
- 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.

The Minister may, by means of a regulation, establish further rules on the preparation and presentation of procurement documents.

Article 39

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.

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The Minister may, by means of a regulation, establish further rules on the preparation and submission of tender forms.

Article 40

Technical specifications

Technical specifications as defined in Item 1 of Annex VI of the Directive shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. Whenever possible, these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or should be designed for all users.

Technical specifications shall afford equal access for tenderers and 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 Iceland pursuant to the EEA agreement, technical specifications shall be formulated in any the following manners:

- a. For technical specifications as the concept is defined in Annex VI of the Directive along with references to any of the following in order of preference specified herein:
 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.

Where a contracting authority makes use of Item a of Paragraph 3, 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.

Where a contracting authority uses Paragraph 3 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.

Where contracting authorities lay down environmental characteristics in terms of performance or functional requirements as referred to in Item b of Paragraph 3, they may use the detailed specifications or, if necessary, parts thereof, as defined by European, international or national eco-labels, or by any other eco-label, provided that the following requirements are fulfilled:

1. The specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract.

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2. The requirements for the eco-label are drawn up on the basis of scientific information.
3. The eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate.
4. The eco-labels are accessible to all interested parties.

Contracting authorities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents. Contracting authorities must also accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

"Recognised bodies", within the meaning of this Article, are test and calibration laboratories and certification and inspection bodies which comply with applicable European standards. Contracting authorities shall accept certificates from recognised bodies established in other member states of the European Economic Area or the states that were original members of the European Free Trade Association. 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 Paragraphs 3 and 4 is not possible; such reference shall be accompanied by the words "or equivalent" or similar wording.

Article 41

Variants

Where the criterion for award is that of the most economically advantageous tender, and not price only, contracting authorities may authorise tenderers to submit variants. Contracting authorities shall indicate in the contract notice whether or not they authorise variants in accordance with Item o of Paragraph 1 of Article 38, but variants shall otherwise not be authorised. Only variants meeting the minimum requirements laid down by the contracting authorities shall be taken into consideration.

In procedures for awarding public supply or service contracts, contracting authorities which have authorised variants may not reject a variant on the sole ground that it would, if successful, either lead to a service contract rather than a supply contract or to a supply contract rather than a service contract.

Article 42

Subcontracting

The contractual documents 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 also inform the client which subcontractors he plans to employ and seek the approval of the client before the subcontractor starts working. 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 43

Conditions for performance of contracts

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with EEA law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations.

Article 44

Obligations relating to taxes, environmental protection, employment protection provisions and working conditions

A contracting authority may state in the contract documents the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, environmental protection, employment protection provisions and working conditions which are in force in Iceland or the

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region or locality in which the works are to be carried out or services are to be provided during the performance of the contract.

A contracting authority which supplies the information referred to in Paragraph 1 shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and working conditions which are in force in Iceland or in the local authority area where the works are to be carried out or the service is to be provided.

The provisions of Paragraph 1 shall be without prejudice to the application of the provisions of Article 73 concerning the examination of abnormally low tenders.

Article 45

Contract award criteria

The criteria for choosing a tender shall either be based on the lowest price or on the greatest economic advantages from the point of view of the contracting authority. The criteria on which an assessment of economic advantage is made shall be linked to the subject-matter of the contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, operating costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion of the contract.

The contract notice, the contract documents or, in the case of a competitive dialogue, the descriptive document, shall specify as accurately as possible the criteria for choosing the tender. Such criteria may not refer to factors other than those that may be proved relevant on the basis of materials provided by tenderers, or in another objective manner.

In the case referred to in Paragraph 2, the contracting authority shall specify the relative weighting which it gives to each of the criteria chosen to choose the tender. Those weightings can be expressed by providing for a range with an appropriate maximum spread. Where weighting is not possible for demonstrable reasons, the contracting authority shall list the criteria in descending order of importance.

CHAPTER VII

Criteria for qualitative selection

Article 46

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 47

Personal situation of the candidate or tenderer

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 a public contract:

- a. participation in a criminal organisation, b. corruption,
- c. fraud,
- d. money laundering.

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The contracting authorities shall, where appropriate, ask candidates or tenderers to supply documents concerning the points specified in Items a to d. If the contracting authority has doubts concerning the personal situation of candidates or tenderers, it may apply to the competent authorities to obtain any information they consider necessary concerning those points. Where the information concerns a candidate or tenderer from another country, the contracting authority may seek the co-operation of the competent authorities in the respective state. Having regard for the national laws of that state, such requests shall relate to legal and/or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

Any economic operator may be excluded from participation in a contract where any of the following applies:

- a. 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.
- b. 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.
- c. The economic operator has been convicted by final judgement of any offence concerning his professional conduct.
- d. The economic operator has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate.
- e. The economic operator has not fulfilled obligations relating to the payment of social security contributions or similar statutory payments.
- f. The economic operator has not fulfilled obligations relating to the payment of taxes or similar legally statutory payments.
- g. The economic operator has given false financial or technical information or has failed to supply such information.

An assessment of whether or not Items a to g 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.

If an economic operator is required to provide evidence concerning the points specified in Paragraph 1 or in Items a, b, c, d, e or f of Paragraph 2, the following shall be regarded as sufficient evidence:

- a. As regards Paragraph 1 and Items a, b and c of Paragraph 2, the production of an 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 Items e and f of Paragraph 2, a certificate issued by a competent authority in the appropriate state.

Where the country in question does not issue such documents or certificates, or where they do not cover all the cases specified in Paragraph 1 and Items a, b and c of Paragraph 2, 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 of origin or in the country whence that person comes.

The Ministry of Finance shall designate the domestic authorities and bodies competent to issue the documents, certificates or declarations referred to in Paragraph 3 and shall inform the EFTA Surveillance Authority thereof. Such notification shall be without prejudice to the Act on Privacy Protection and Treatment of Personal Data.

Article 48

Suitability to pursue the professional activity

Domestic economic operators must be able to show that they are registered in the register of companies. 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 an oath or a certificate in accordance with Annex IX A of the Directive for works contracts, Annex IX B of the Directive for supply contracts or Annex IX C of the Directive for service contracts.

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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 49

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. No requests shall be made for documents beyond those necessary to confirm financial standing with regard to the nature and extent of the proposed procurement. Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

- a. Appropriate statements from banks or, where appropriate, evidence of work completion guarantees or other insurance for damages that may be suffered by the contracting authority resulting from possible non-compliance on the part of the economic operator.
- b. Audited annual accounts for previous years or extracts from them, where publication of the balance-sheet is required under the law of the country in which the economic operator is established.
- c. A statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last three financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as this information is available.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, through the joint establishment of a separate undertaking by the economic operators in question for this purpose..

Under the same conditions as specified in Article 46, a group of economic operators involved in a request for participation or tender may rely on the joint financial capacities of members within their group.

The contract notice or procurement documents shall specify which references mentioned in Paragraph 1 the economic operator must provide or which other references may be required at a later stage. Any other required financial documents must also be specified. If the economic operator is unable to provide the references specified in Paragraph 1, he may prove his financial standing by showing any other document which the contracting authority considers appropriate.

Article 50

Technical ability

The technical ability of the economic operator shall be sufficiently secure so that commitments to the contracting authority may be fulfilled. Evidence of the economic operator's technical abilities may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the works, supplies or services:

- a.
 - i. A list of the works carried out over the past five years, accompanied by certificates of satisfactory execution for the most important works in the case of works procurement. These certificates shall indicate the value, date and site of the works and shall specify whether they were carried out according to the rules of the trade and properly completed. Where appropriate, the competent authority shall submit these certificates to the contracting authority directly.
 - ii. A list of the principal deliveries effected or the main services provided in the past three years, with the sums, dates and recipients involved, whether public or private, in cases of the procurement of services or supplies.
When the recipient of goods or services was a public contracting authority, evidence of delivery of the goods or services shall be provided in the form of certificates issued or countersigned by the respective contracting authority. When the recipient of goods or services

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was a private purchaser, evidence of delivery of the supplies or services shall be provided in the form of the purchaser's certification or, failing this, by a declaration by the economic operator.

- b. An indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and execution, in the case of works contracts.
- c. A description of the technical facilities and measures used to ensure quality and the undertaking's study and research facilities.
- d. When the products or services to be supplied are complex or are required for a special purpose: a check carried out by the contracting authorities on the production capacities of the supplier or the technical capacity of the service provider and on the means of study and research which are available to it and the quality control measures it will operate if necessary. A competent public body in the country in which the economic operator is established may carry out the aforementioned check on behalf of the contracting authority in accordance with valid regulations concerning such a body.
- e. Information regarding the educational and professional qualifications of the service provider or contractor and/or those of the undertaking's staff and, in particular, those of the person or persons responsible for providing the services or managing the work.
- f. For works contracts and services contracts, and only in appropriate cases, with information of the environmental management measures that the economic operator will be able to apply when performing the contract.
- g. A statement of the average manpower of the service provider or contractor and the number of managerial staff for the last three years.
- h. A statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract.
- i. An indication of the proportion of the contract which the services provider intends possibly to subcontract.
- j. In the case of supplies: samples, descriptions and/or photographs that confirm the suitability of the supplies, or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

An economic operator may, where appropriate and for a particular contract, rely on the technical capabilities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the technical resources necessary for execution of the contract, for example, by producing an undertaking by those entities to that effect.

Under the same conditions as specified in Article 46, a group of economic operators may rely on the technical capacities of participants in the group or of other entities.

In the case of supply contracts having as their object supplies requiring siting or installation work, the provision of services and/or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated in particular with regard to their skills, efficiency, experience and reliability. The contract notice or procurement documents shall specify which references mentioned in Paragraph 1 the economic operator must provide or which other references may be required at a later stage.

Article 51

Quality assurance standards

Should a contracting authority require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, it shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification. Contracting authorities shall recognise equivalent certificates from bodies established in other states of the European Economic Area and the original member states of EFTA. They shall also accept other evidence presented of equivalent quality assurance measures from economic operators.

Article 52

Environmental management standards

Should contracting authorities, in the cases referred to in Item f of Paragraph 1 of Article

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50, require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to EU law or the relevant European or international standards concerning certification. Contracting authorities shall recognise equivalent certificates from bodies established in other states of the European Economic Area and the original member states of EFTA. They shall also accept other evidence presented of equivalent environmental management measures from economic operators.

Article 53

Presentation of additional documentation and information

The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 47 to 52 at any stage of the invitation to tender.

Article 54

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

Economic operators registered on official lists of approved contractors, suppliers or service providers, or certified as such by public or private bodies in other states of the European Economic Area or the original member states of EFTA, may, on confirmation of their registration on the relevant list or certification, present evidence that the following conditions have been met, as long as nothing further is revealed:

- a. The economic operator fulfils the conditions of Paragraph 1 and of Items a, d and g of Paragraph 2 of Article 47.
- b. The economic operator fulfils the requirements of Article 48.
- c. The economic operator fulfils the requirements of Items b and c of Paragraph 1 of Article 49.
- d. The economic operator fulfils the requirements of Sub-item i of Item a, and Items b, e and g of Paragraph 1 of Article 50, as well as Item h of the same Paragraph in the case of contractors.
- e. The economic operator fulfils the requirements of Sub-item ii of Item a, and Items b, c, d and j of Paragraph 1 of Article 50 in the case of suppliers.
- f. The economic operator fulfils the requirements of Sub-item ii of Item a, and Items c to i of Paragraph 1 of Article 50 in the case of service providers.

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.

The contracting authorities shall apply Paragraphs 1 and 2 in favour of economic operators established in the states of the European Economic Area or in the original member states of the European Free Trade Association and registered there on an official list.

Chapter VIII

The conduct of the procedure

Article 55

Publication of a contract notice

Public tenders, including public framework agreements, must be advertised in a conspicuous manner such that all interested economic operators can take part in the tendering process. The contract notice shall include sufficient information so that economic operators can decide if they wish to take part in the tendering process. Concurrent to or following such publication of a notice, a contracting authority may encourage specific parties to participate in the tendering process. Such parties may not, however, be provided with information other than that indicated in the notification of tender.

Article 56

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Pre-selection for restricted procedures, competitive dialogues and negotiated procedures

In the case of closed procedures, competitive dialogues and negotiated procedures following the publication of the contract notice, the participants shall be chosen with pre-selection in accordance with this Article.

Pre-selection shall be advertised in a conspicuous manner so that all interested economic operators can take part in pre-selection. The advertisement shall provide sufficient information for economic operators to decide whether they intend to participate in the tender or pre-selection.

The number of participants in a tendering process, competitive dialogue or negotiated procedure may be limited during pre-selection, as long as a sufficiently high number of participants took part in the pre-selection process. The notice of pre-selection shall include objective and impartial conditions or rules that form the basis for selection of participants during pre-selection, 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 a closed procedure. At least three participants must be selected as a result of pre-selection for a negotiated procedure after publication of the contract notice or for a competitive dialogue. 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 tendering process. 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 tendering process by allowing those who meet the requirements to take part in the tendering process. Economic operators which did not take part in pre-selection may not take part in the tendering process at this stage. The same applies to participants not fulfilling the capability requirements.

When a contracting authority exercises its right to reduce the number of tenders or the number of participants in a competitive dialogue or negotiated procedure after publication of the contract notice, in accordance with Articles 31 and 32, such decisions shall be based on selection criteria presented in the contract notice, specifications or descriptive documents. In the final stages, the number arrived at shall make for genuine competition insofar as there are enough tenders or suitable candidates.

Article 57

Deadline for submission of tenders

The deadline for submission of tenders shall be sufficiently long to allow tenderers to prepare their tenders.

Article 58

Deadline in open procedures

The deadline for submission of tenders in open procedures shall be at least 15 calendar days. This period shall be calculated from the day following publication of the contract notice up to and including the opening day. All calendar days are included.

Article 59

Deadline in restricted procedures, competitive dialogues or negotiated procedures

The deadline for submitting requests to participate in pre-selection for restricted procedures, competitive dialogues or negotiated procedures after publication of the contract notice shall be at least 15 calendar days. This period shall be calculated from the day following publication of the contract notice up to and including the opening day. Parties selected in pre-selection process for restricted procedures shall be given at least 10 calendar days to submit tenders. The deadline shall be calculated from the date on which the procurement documents are sent. In other respects, the same rules shall apply on the determination of the deadline as apply to open procedures.

Article 60

Accelerated procedure

If it is necessary to accelerate the tendering process for reasons beyond the control of the contracting authority, the deadlines specified in Articles 58 and 59 may be waived. However, the deadline for submitting tenders

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may never be shorter than 7 calendar days from the publication of the notice.

Article 61

Delivery of documents

Procurement documents must be ready for delivery within three days of the publication of the notice.

Article 62

On-site inspection

If it is impossible for a tenderer to submit a tender without inspecting the site, or if on-site inspection is offered, the deadline for submitting tenders shall be extended to include a reasonable time for on-site inspection if this is requested by tenderers or participants.

Article 63

Queries and comments during the tender period

If more detailed documentation or further explanations concerning procurement documents are desired, a written request must be received by the co-ordinator of tenders no later than 7 calendar days before the expiry of the deadline.

If the contracting authority believes there is reason to provide new documents or respond to a query as provided for in Paragraph 1, the documents or query, together with response to this, must be sent to all parties who have so requested or whom have been sent procurement documents. The tenderers must receive new documents or explanations no later than four calendar days prior to the expiry of the deadline.

All queries, reservations or notices concerning the tendering process shall be made in writing, cf. however Article 68.

Article 64

Revocation of tenders

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

Article 65

Postponement of opening of 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 66

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 68.

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 not be examined unless his tender is under consideration. Tenders must be signed by a competent party.

Article 67

Submission of variants

If a variant is submitted, special mention of such shall be made on the tender application form. Variants must

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be accompanied by a clear and comprehensive description as to how the tender deviates from the technical description of the tender documents.

Article 68

Format of tenders and other communications between contracting authorities and tenderers

All communication and information exchange referred to in this Article may be by mail, by fax, by electronic means in accordance with Paragraphs 4 and 5, by telephone in the cases and circumstances referred to in Paragraph 6, or by a combination of those means, according to the choice of the contracting authority.

The means of communication chosen must be generally available and may not restrict economic operators' access to the tendering process.

Communication and the exchange and storage of information shall be carried out in such a way as to ensure the integrity of data. 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.

The tools to be used for communicating by electronic means, as well as their technical characteristics, shall be generally 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.

The following rules are 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, shall be available to interested parties. Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Annex X.
- b. In compliance with Act No 28/2001 on Electronic Signatures, it is permitted to require that electronic tenders be accompanied by an advanced electronic signature.
- c. Tenderers or candidates shall undertake to submit, before expiry of the time limit laid down for submission of tenders or requests to participate, the documents, certificates and declarations referred to in Articles 47 to 52 and Article 54 if they do not exist in electronic format.

The following rules shall apply to the transmission of a request to participate:

- a. Requests to participate in a tendering process may be made in writing or by telephone. be sent before expiry of the deadline set for their receipt.
- c. A contracting authority may require that requests for participation made by fax or electronic means must be confirmed where this is necessary for the purposes of legal proof. Any such requirement, together with the time limit for sending confirmation by mail or electronic means, must be stated in the contract notice.

Article 69

Opening of tenders

Tenderers may be present when tenders are opened and are entitled to have the following information read aloud as it is indicated in the tenders:

- a. Name of the tenderer.
- b. Total tender amount.
- c. Whether the tender is submitted as a variant.

When tenders are submitted by electronic means, it is sufficient that tenderers are informed of the items specified in Paragraph 1 after the expiry of the tendering period. Tenders received too late must be returned to the tenderers unopened together with an explanation of the reasons for their return.

The Minister may, by means of a regulation, establish special rules concerning the opening of tenders submitted by electronic means, provided that the provisions of Article 68 are observed.

Article 70

Use of electronic auctions

Contracting authorities are permitted to make procurements by means of electronic auctions according

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to the following provisions of this Article.

In open, restricted or negotiated procedures in accordance with Paragraph 1 of Article 32, the contracting authorities may decide that the award of a public contract shall be made by electronic auction when the contract specifications can be established with precision. In the same circumstances, an electronic auction may be held among the parties to a framework agreement as provided for in Paragraph 4 of Article 32 and during competitions for contracts to be awarded under the dynamic purchasing system referred to in Article 35. An electronic auction shall be based either solely on prices, when the contract is to be awarded to the lowest price, or on prices and/or other features of the tenders indicated in the specification, when the contract is to be awarded to the most economically advantageous tender.

A contracting authority which decides to hold an electronic auction shall state that fact in the contract notice.

The tender specifications shall include, inter alia, the following details:

- a. The features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages.
- b. Any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract.
- c. The information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them.
- d. The relevant information concerning the electronic auction system.
- e. The conditions under which the tenderers will be able to bid, and in particular, the minimum differences in new bids from the tenderer, in the event that such conditions exist.
- f. The relevant information concerning the electronic equipment used and information about the arrangements and technical requirements to be met by the tenderer so that he can connect to the bidding system.

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 admissible tenders shall be invited simultaneously to submit new prices and/or new values. The invitation to tenderers shall contain all relevant information concerning how the respective tenderer connects to the electronic equipment 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 72. 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 in which the tenderer was invited to participate in the auction.
- b. When they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the notice in which the tenderer was invited to participate in the auction 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 to take part in the auction, has been completed.

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

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After closing an electronic auction, the contracting authority shall award the contract on the basis of the results of the electronic auction in accordance with Article 72. The contracting authority may not have improper recourse to electronic auctions nor use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract as put up for tender in the published contract notice and defined in the tender specification.

CHAPTER IX Selection of tenders

Article 71

Tenders to be considered

When contracting authorities award contracts, only valid tenders shall be considered, including valid variants, from economic operators not excluded under Articles 47 and 48, which fulfil requirements concerning financial standing and professional and technical ability and other aspects referred to in Articles 49 to 54, and have been invited to submit a tender in accordance with Article 56 in the event of cases involving pre-selection.

Article 72

Evaluation of the most advantageous tender

The basis for selecting tenderers shall be the most advantageous tender. The most advantageous tender is the one which has the lowest price or the tender which best fulfils the needs of the contracting authority according to the criteria laid down in the tender documents according to Article 45.

Tenders may not be evaluated against criteria other than those indicated in the tender documents, in accordance with Article 45.

More than one tender may be accepted if the procurement is divided into a number of independent parts in the procurement documents.

Article 73

Abnormally low tenders

When a tender seems unnaturally low having regard to the product, work or servicing to be purchased, the contracting party shall, before he may decline those tenders, request a detailed, written description of the contents of the tender that he considers important. That information may particularly apply to:

- a. efficiency of a building method, production process or servicing,
- 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. originality of the proposals of the tenderer regarding work, product or servicing,
- d. conformity with applicable provisions on worker safety and working conditions at the location of the implementation of the work, the delivery of a product or the rendering of service,
- e. salary, other employee benefits and personnel working conditions,
- f. the possibility of a tenderer of receiving state aid.

The contracting party shall verify the contents of the bid by discussions with the bidder, considering the submitted data.

If the contracting party arrives at the conclusion that the offer is unnaturally low re a state aid to the bidder, 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 party declines an offer at these circumstances, he shall notify EFTA Surveillance Authority of that decision.

The contracting party is required to reason the decision of declining an offer on the basis of it being unnaturally low. Information that the contracting party gets pursuant to this Article shall be treated as confidential information.

Article 74

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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.

A contracting authority may not utilise ideas or a tender from a tenderer in any manner after rejecting it.

Article 75

Reasons for rejection of a tender and other decisions

Contracting authorities shall, as soon as possible, inform candidates or tenderers of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system. 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 reasoning in writing on request.

The notification of the decision to award a contract pursuant to paragraph 1 shall include the name of the selected tenderer chosen and information on the characteristics and merits of the tender the contracting authority selected with reference to the selection criteria specified in the procurement documents. Such notification shall also include a statement on the exact withdrawal period for the contractual process pursuant to Article 76

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 4 and 5 of Article 40, 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.

A request for reasoning according to Paragraph 3 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

co-ordinator of tenders. However, the reasoning shall not contain information referred to in Paragraph 1, regarding the contract award, the conclusion of framework agreements 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.

A notification pursuant to paragraphs 1 and 2 shall be communicated to all economic operators that have neither been rejected nor refused participation in the procurement procedures by a final decision. Decision is not declared final until it has been communicated to the tenderer and time frames for submission to the Public Procurement Complaints Commission have expired or it has been confirmed by the Commission.

Article 76

The withdrawal period of the contractual process and the adoption of a tender.

It is forbidden to conclude a contract following a decision on the selection of a tender until the 10 days withdrawal period has expired, starting from the day when the notification pursuant to paragraphs 1 and 2. Paragraph 75 is considered publicised. The withdrawal period is always considered expired when 15 days have passed from the day after the notification. On publicising of electronic notifications, including notifications by fax, the following applies in accordance with the instructions of the Administrative Procedures Act No. 37/1993, cf. Article 6 of Act No. 51/2003.

The withdrawal period pursuant to paragraph 1 does not apply in the following cases:

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- a. At entering into agreements that is authorized without a prior contract notice.
- b. At entering into agreements where it is permanently clear that there is only one tenderer or participant.
- c. At entering into agreements on the basis of reverse auction pursuant to Article 35 or framework agreement pursuant to Article 34

A special contract may be made for the purchase of goods, services or works on the basis of the tender after the offer has been accepted. However, in such cases, the fundamental aspects of the offer may not be amended so as to disrupt competition or cause inequality. Once a contract as referred to in Paragraph 1 has been awarded, all tenderers shall be notified without delay. When the contracting party cannot complete his evaluation of various tenders within the set time period, it is permitted to extend the evaluation for a short time. The approval of all participants or objective reasons justifying extension is conditional. With the same requirement it is permitted to invite tenderers to announce the revalidation of their tender for a brief time period, even if the deadline has expired. When an agreement has been declared ineffective pursuant to Chapter XV is it permitted to agree upon a tender which should by every right have been accepted without consideration to the time limit for the receipt of tenders.

Article 77

Pseudo-contracting

Employment relationship between parties is the principle in the communications between the employees and employers. 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.

TITLE 3

Public procurement in the European Economic Area CHAPTER X

Scope of this title, authorisation to establish administrative orders, etc.

Article 78

Threshold amounts for public procurements in the European Economic Area

The provisions of this title and administrative provisions established under its provisions shall apply to public procurements exceeding threshold amounts which the Minister shall publish in Icelandic króna in a regulation in accordance with Articles 7, 8 and 9 of the Directive. Moreover, the threshold amounts referred to in Paragraph 1 of Article 35 of the Directive as well as threshold amounts for the awarding of public works concessions, pursuant to Article 56 and 63 of the Directive, and the threshold amounts for a design contest, pursuant to Article 67 of the Directive, shall be published in a regulation. On the determination of threshold amounts, account shall be taken of revisions which may have been made pursuant to Article 78 of the Directive, provided that the Acts in question have been incorporated into the EEA Agreement. The threshold amounts shall be revised every two years, for the first time on 31 January 2008.

The Minister shall establish, by means of a regulation, rules on contract notices and other notices for procurements in the EEA in accordance with the Acts referred to in Annex XVI of the EEA Agreement. Furthermore, the Minister may, by means of a regulation, establish further rules on public procurement exceeding the threshold amounts pursuant to Paragraph 1, provided that they are in accordance with the provisions of the Directive and other obligations of the State of Iceland pursuant to the EEA Agreement.

Article 79

Execution of public procurements exceeding EEA threshold amounts

On the execution of public procurements exceeding threshold amounts pursuant to Article 78, the provisions of Articles 35 to 43 of the Directive shall be complied with, as shall the rules referred to therein, as applicable, as they may have been amended by Article 79 of the Directive. In other respects, the rules of TITLE 2 of the Act shall apply, with the following exceptions:

- a. In the event of exercising the authorisation contained in Paragraph 2 of Article

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27, to award contracts for a portion of procurements without putting out to tender up to 20% of the aggregate total amount of the contract, the value of the item shall not exceed the equivalent of EUR 80,000 as regards supply and service contracts, and EUR 1 million as regards works contracts.

- b. In the case of procurement of services pursuant to Annex II B of the Directive, pursuant also to Articles 21 and 22 of the Directive, a report on the awarding of the contract shall be sent in accordance with the further provisions of Paragraph 4 of Article 35 of the Directive.
- c. The prerequisite for negotiated procedures without prior notice of tender taking place, pursuant to Item a of Paragraph 1 of Article 33, is that a notification of the utilisation of this authorisation is sent to the EFTA Surveillance Authority if so requested.
- d. In the event of exercising the authorisation contained in Article 36 on contracts for the design and construction of State housing, the provisions of Articles 35, 36, 38, 39, 41, 42 and 43 of the Directive shall be complied with.
- e. If conditions to shorten time limits pursuant to Paragraph 8 of Article 38 of the Directive are met, time limits may be shortened pursuant to Paragraph 1 of Article 76 or abandoned entirely when it is vital to prepare a contract immediately.

In the event of contracts which do not fall within Paragraph 1, the contracting authority, all things being equal, may publish the contract notice.

CHAPTER XI

Rules on the awarding of public work concessions and design contests

Article 80

Public works concessions exceeding EEA threshold amounts

The award of a public works concession with an estimated value which is equal to or greater than the threshold amount for such a contract, pursuant to regulations on threshold amounts established in accordance with Article 78, shall comply with the provisions of Articles 56 to 65 of the Directive.

Article 81

Design contest exceeding EEA threshold amounts

The implementation of a design contest with an estimated value which is equal to or greater than the threshold amount for such contest, pursuant to regulations on threshold amounts established in accordance with Article 78, shall comply with the provisions of Articles 66 to 74 of the Directive.

CHAPTER XII

Reports, EFTA Surveillance Authority, etc.

Article 82

Reports on public procurement exceeding EEA threshold amounts

The Ministry of Finance shall prepare a report in accordance with Articles 75 and 76 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 of Finance and the information which shall be included in those reports.

Article 83

Investigation by the EFTA Surveillance Authority

EFTA Surveillance Authority is authorized to resort to the procedure provided for in paragraphs 2 to 4 if the Authority considers, before an agreement has been concluded, that the implementation of the procurement procedure that is covered by the Directive as it has been incorporated into the EEA Agreement, that serious violations have been committed of the rules of the EEA Agreement on Public Procurement. The Ministry of Finance shall represent the Icelandic State at this procedure. For the benefit of this procedure is the Minister of

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Finance authorized to suspend temporarily the invitation to tender or any other procurement after notification by the EFTA Surveillance Authority has been received.

The EFTA Surveillance Authority notifies the Icelandic State of the grounds for the Authority's assessment that a serious violation has occurred and requests that it should be appropriately corrected. The Ministry of Finance shall, no later than 21 days after the notification is received, confirm in a communication to the Authority that the violation has been corrected, send a reasoned statement explaining why no improvements have been made, or a notification of the temporary suspension of procurement procedures and award of contract, whether that occurred at the request of the Minister of Finance or the Public Procurement Complaints Commission.

The reasoned statement explaining why no improvements have been made may be established upon an argument that the violation is already being discussed by the Public Procurement Complaints Commission or courts of law or if the decision by the Public Procurement Complaints Commission has been submitted to courts of law. Under these circumstances the ministry shall notify the Authority on the outcome of such a case as soon as it becomes available.

When a temporal shutdown of a procurement procedure has been notified, see When notification of suspension of procurement procedures has been issued, see paragraph 2, shall the ministry notify the Authority when the suspension is lifted or the procurement procedures for that very procurement, as a whole or partially, has resumed. It shall be noted in this notification that improvements have been made or reasons for why it has not been done.

TITLE 4

Public administration, complaints, etc.

CHAPTER XIII

Central administration of public procurement and activities of procurement agencies

Article 84

Central administration of public procurement

Public procurement is subject to the authority of the Minister of Finance who shall be responsible for the implementation of this Act.

Article 85

The State Trading Centre

The State shall operate a central purchasing body, the State Trading Centre (*Ríkiskaup*). The Centre shall be responsible for procurements for State institutions and State concerns, shall examine joint needs for supplies and services and shall endeavour to coordinate procurements for state needs. 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 dispose of state property which is no longer needed, as further decided by the Minister of Finance.

The State Trading Centre shall prepare framework agreements on behalf of the State and shall manage tenders and other procurement procedures carried out by State institutions for procurements, whether over threshold amounts pursuant to Article 20 or Pursuant to Article 78. The Minister of Finance, however, may authorise individual State institutions to handle their own procurements above the threshold amounts.

Article 86

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

A contracting authority which has obtained a project, product or service though 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.

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Article 87

Operating goals of the State Trading Centre

The State Trading Centre shall endeavour to ensure cost-efficiency in State procurement. It shall achieve this goal by:

- a. developing a quality service institution in the field of public procurement, with knowledgeable and experienced personnel in the field of procurement for State institutions;
- b. developing procedures for tendering and procurement which ensure equal treatment of tenderers and effective competition;
- c. increasing the productivity of and simplifying public procurement with a modern procurement system, tenders and coordinated procurement;
- d. facilitating commercial connections between suppliers and State institutions;
- e. sharing its knowledge and experience with State institutions, in order to fulfil the commercial needs of the State effectively.

Article 88

General Manager of the State Trading Centre

The Minister of Finance shall appoint the General Manager for a term of five years. The General Manager shall supervise the day-to-day operation of the State Trading Centre and shall be responsible for the Centre's finances and accounts. 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 General Director shall employ the employees of the Centre.

Article 89

Tariff of the State Trading Centre

The State Trading Centre sells its services to State institutions and State concerns in accordance with a tariff established by the Minister of Finance 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.

Article 90

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.

CHAPTER XIV

The Public Procurement Complaints Commission

Article 91

The role and composition of the Public Procurement Complaints Commission

- a. Three men and equally many alternate members constitute the Commission, appointed by the minister, following a nomination of the Supreme Court for four years each time. Two members of the Commission and their alternate members, shall fulfil the legal terms in order to hold the office of a district judge and one of them shall be the chairman of the Commission. The third member of the Commission and alternate member shall have an extensive experience and knowledge of commerce. The members of the Commission shall be independent of the interest of the state and other official bodies.
- b. The role of the Commission is to settle, quickly and impartially, complaints submitted by undertakings relating to alleged violations of this Act, and rules established on the basis thereof, including the provisions

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- of the Directive, Directive No. 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and other EEA Acts referred to therein.
- c. 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.
 - d. At the request of the Ministry of Finance, or contracting authority, the Public Procurement Complaints Commission may deliver an advisory opinion on particular procurements even in the absence of any complaint.
 - e. The Commission only deals with procurements made by local authorities to the extent that they fall under Title 3 of the Act.

Article 92

The composition of the of Public Procurement Complaints Commission in individual cases and specialised counselling.

In cases relating to vital interests or are by other means deemed important from the standpoint of public interest the chairman may decide to add two extra persons to supplement the Commission. At least one of them shall meet legal requirements made of district court judges and shall be installed in order to handle the case after being nominated by the Supreme Court.

The chairman may decide to call for experts to advice and assist the Commission. They shall cooperate with the Commission according to a further decision by the Chairman who also determines the fee.

Article 93

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.

When referring to a complaint made due to an alleged violation of an obligation to employ the procurement procedure determined by law or advertise procurement, the complaint is not conditional upon legally enforceable interests. The Minister is also authorized to launch a complaint due to such violations, regardless of legally enforceable interests.

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

Article 94

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. Requirement of the inactivity of a contract is, however, authorised to ask the Commission about its opinion on it within 30 days from the abovementioned time limit. Requirement of the inactivity of a contract will, however, not be taken up when six months have elapsed after its conclusion. The following is applicable when further determining the deadline:

- a. When a decision to award a contract or other decisions, as provided by paragraphs 1 and 2 of Article 75, shall the beginning of the time period be set at when the relevant notification was issued, provided they contain the stipulated information.

- b. When a claim regarding inactivation of a contract, as concluded without a prior tender notice, shall the beginning of the time period be set when the relevant notification of the award of contract was issued in the Official Journal of the European Union provided it contains arguments for the contracting authority's decision 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

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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 the claims as soon as possible. If a complaint does not fulfil the conditions of the 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.

A complaint charge amounting to ISK 150,000 shall be paid for each complaint.

Article 94(a)

Legal effects of a complaint.

If a decision to select a tender has been subjected to a complaint, the awarding of contract is prohibited until the Public Procurement Complaints Commission has permanently resolved the complaint. Automatic suspension of the contractual process due to a complaint shall apply as when the contracting authority should have been aware of the complaint, whether through the notification by the complainant pursuant to paragraph 2 Article 94 or the notification of the Complaints Commission pursuant to paragraph 1 Article 95

The Complaints Commission may, whether as demanded by the defendant or by an autonomous action, decide to lift the ban on a contractual process. The provisions of Article 96 apply for such a decision, where appropriate. The decision of the Complaints Commission on the lifting of a ban on a contractual process shall never apply until the withdrawal period of the contractual process has expired, pursuant to Article 76

In other respects than resulting from paragraph 1 does a complaint not result in automatic suspensions of the procurement procedures.

Article 95

Processing of complaints and gathering of documentation

Should a complaint be acceptable for material processing, as provided for in Article 94, the Commission shall grant the party against which the complaint is directed an opportunity to express itself on the substance of the complaint

The complainant shall, as a rule, be granted a short time to express himself with regard to the comments of the defendant and other parties who have been given the opportunity to express themselves.

The proceedings shall be carried out in writing, but the Commission may also grant the parties the opportunity to present arguments orally. Now a case is proceeded for the Public Procurement Complaints Commission where a position must be taken on the explanatory remarks to the Agreement on the European Economic Area, and the attached protocols, annexes or acts referred to in the annexes, the chairman may, in accordance with Article 34 of the Agreement between the EFTA states on the establishment of a Surveillance Authority and a Court of Justice, make a ruling on seeking advisory opinion of the EFTA Court on how to explain that particular issue before the matter is resolved. Whether a party to the case demands that such an opinion be sought for or the chairman deems that necessary without such a demand, the parties shall be given an opportunity to comment before a ruling is given.

The Commission may demand that the parties to the case submit any documentation or

other information concerning the complaint. If a complainant fails to respond to such a demand, his complaint may be dismissed immediately. If the party against whom a complaint is directed fails to respond to such a demand, his disregard may serve to his disadvantage in the resolution of the question.

A majority vote by the Commission members shall determine the outcome of a question. The conclusion of the minority, where such exists, shall be included in the Commission's opinion. The Chairman or Vice-chairman shall direct the work of the Commission. When Commission members are not unanimous in their conclusions, the majority shall determine the outcome of a question. If the Commission is divided into three in its conclusion, or the conclusion cannot be determined by a majority vote, the vote of the Chairman shall determine the outcome.

The Complaints Commission must deliver its ruling on a complaint as rapidly as possible, but no later than one month after it receives the comments of the complainant pursuant to Paragraph 3, if applicable.

In other respects, the treatment of questions before the Commission shall be governed by the provisions of the Public Administration Act, No 37/1993.

Article 95(a)

Defence involvement

The defendant of a case shall be the contracting party or more purchasers jointly, if applicable. If the State Trading Centre or any other central purchasing body, within the meaning of this act, has been responsible for procurement, the trading centre shall also be considered a defendant before the Commission. The contracting authority is entitled to entrust its representation before the Public Procurement Complaints Commission to the central purchasing body.

In the event of another economic operator, such as another tenderer in open procedure or a participant in a pre-qualification process, in a restricted procedure, a competitive dialogue or negotiated procedure, has legally enforceable interests to protect with respect to the conclusion of the Commission, this party shall also be considered a defendant.

Article 96

Temporary suspension of procurement procedures or contract procedures

The Public Procurement Complaints Commission is permitted to temporarily suspend a procurement procedure at the request of the complainant until a permanent ruling on a complaint has been given, provided that a sufficient probability has been established regarding the occurrence of a violation of this Act, regarding a particular procurement that might lead to the annulling of a decision or other acts of the defendant. The same applies regarding infringements of provisions of the Directive to which reference is made in the Act or violations committed of the rules that were established by the Act. The private and general interests in question can be considered while assessing whether a contractual process shall be temporarily suspended and reject a claim if these interests are deemed weightier than the interests of an economic operator.

The provisions of Articles 94 and 95 apply as regarding demands by a complainant, as applicable. The deadline for a defendant to comment on the complainant's claim shall, however, be brief and derogation may be made from this provision in the case of a clear and obvious violation. A party involved may demand that the Commission provide written grounds for a decision, in accordance with this Article, if such grounds did not accompany the decision when notice of it was issued.

The rules of procedure allow the Complaints Commission to decide, pursuant to Article 99, that the chairman of the Commission alone makes decisions pursuant to this Article.

Rejecting a claim of temporal suspension does not affect other claims this complainant may be engaged in on account of procurements.

Article 97

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, inactivate a contract within the framework of the provisions of Articles 100(a) to -100(c) and/or provide other sanctions pursuant to (Article 100(d))

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

Provisions of paragraph 2 Article 24 of Act No. 31/1990 on impoundment, injunction etc. shall not hinder the imposition of injunction regarding an action that might violate a ruling by the Public Procurement Complaints Commission.

Article 98

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 Committee'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 99

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.

CHAPTER XV

The validity, ineffectiveness, other sanctions and compensation.

Article 100

Validity of contracts

Once a binding contract under this Act has been concluded, it shall not be invalidated or altered, even though the decision of 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 shall be applied irrespective of validity pursuant to paragraph 2

Article 100(a.)

The ineffectiveness of a contract

The Complaints Commission may declare a contract inoperative pursuant to the provisions of this Article, however, only a contract exceeding the threshold amounts pursuant to Article 78. The effect of a ruling on the ineffectiveness of a contract shall be that rights and obligations under the main content of a contract are abolished. The ineffectiveness of a contract shall be limited to the payments that have yet to be made. With regard to payments, which have already been made, the Commission shall provide for other sanctions pursuant to (Article 100(d)). The Complaints Commission shall specify from what date the relevant contract is declared ineffective and/or more accurately what parts of a contract is ineffective.

The Public Procurement Complaints Commission shall declare a contract ineffective in the following cases:

a. When an authorized contract, including contracts that are covered by provisions in Chapter XI on the preparation of work concession and design contest, has been made without being properly notified in violation of this Act or rules adopted in accordance thereto.

b. When a contract has been made during the waiting period of the contractual process pursuant to Article 76 or during the shutdown of contractual process pursuant to Article 94(a), (1) the complainant has been unable to seek his rights by lodging a complaint before an agreement was concluded; (2) clear evidence of violation of this Act and/or rules adopted in accordance thereto are available; and (3) the violation was considered likely to affect the complainant's potentiality to be awarded the contract.

c. When a contract exceeding the threshold amounts pursuant to Article 78, has been concluded on the basis of a framework agreement in opposition to the provisions of paragraph 6 Article 34 or within a reverse auction pursuant to paragraphs 5 and 6. Article 35

d. When a contract has been concluded, even though the procurement procedure, invitation to tender or contractual process has been temporarily suspended by the Public Procurement Complaints Commission pursuant to Article 96

Article 100(b)

Exceptions from the ineffectiveness of contracts after notification without obligation.

A contract shall not be declared ineffective if all the following conditions are met:

a. Procurement is considered permitted without foregoing notification of a contract notice;

b. The contracting party has issued a notification pursuant to paragraph 3 that he intends to conclude a procurement contract.

c. A contract has been concluded when the withdrawal period, a minimum of 10 days from an official notification, has expired.

A contract that was concluded on the basis of a framework agreement or dynamic purchasing system shall not be declared -ineffective if all the following conditions are met.

a. The provisions of paragraph 6 have been met, Article 34, paragraphs 5 and 6. Article 35

b. The contracting authority has delivered a notification on the selection of a tender pursuant to Article 75 to those tenderers who have interests to protect.

c. A contract has been concluded when the withdrawal period had expired pursuant to Article 76

The contracting authority, in the notification stating its intent to conclude a procurement contract, see paragraph 1(b), shall provide information on the contracting authority, the subject matter of the contract, the proposed contracting party and the reasons why it is considered permissible to conclude a contract without a foregoing tender notice. In addition, relevant information shall be included, if applicable. The issuing of notifications shall comply with publication rules on issuing tender notices in public, see Article 55 and 79, as applicable.

Article 100(c)

General authorization for departing from contract inactivity.

The Public Procurement Complaints Commission is permitted to reject inactivity of a contract, even when the conditions of Article 100 are met, if it believes that overriding reasons make the continuing implementation of the agreement vital to public interest. The Complaints Commission may inter alia permit temporarily the continuing implementation of a contract while taking into consideration the contracting authority's need to finalize a new procurement procedure for the same procurement within a certain time. If the Complaints Commission utilizes this authorization it shall provide for other sanctions pursuant to (Article 100(d))

Financial interests to the implementation of a contract shall only be considered as vital in exceptional cases where the repercussions of the contract's inactivity would be excessive. Financial interests connected to the contract itself are not considered overriding reasons relating to public interest, for example expenses due to delays in the implementation of the contract's subject matter, expenses relating to a new procurement procedure, expenses relating to a new contracting party or expenses relating to legal repercussions due to the ineffective contract.

The Public Procurement Complaints Commission shall every year transmit to the EFTA Surveillance Authority copies of all rulings where the authorization of paragraph 1 has been applied.

Article 100(d)

Other sanctions: Administrative fines and shortening of the duration of contract

The Tendering Appeals Committee shall levy administrative fines on the contracting party re a contract exceeding threshold amounts pursuant to Article 78 in the following instances:

- a. When a contract has been made during the waiting period of the contractual process pursuant to Article 76 or during the shutdown of contractual process pursuant to paragraph 1 Article 94 (a) or Article 96, but the conditions for inactivity are not satisfied.
- b. When a contract is not declared ineffective *ex tunc* or merely partially, see paragraph 1 Article 100(a)
- c. When inactivity is rejected, partially or totally, in reference to overriding reasons relating to general interest, see Article 100(c)

When several contracting authorities are conducting a joint procurement, fines shall be determined on an individual basis for each of the contracting authorities. The same applies for the State Trading Centre or other central purchasing bodies that has managed procurement. Administrative fines shall amount to 10% of the estimated worth of the contract. When determining the amount of the fines the nature and extent of the violation, the contracting authority's track record and whether and to what extent contracts have previously been kept active shall be taken into account.

The Director of Customs is responsible for the collection of administrative fines which shall accrue to the Treasury. The fines are due one month from the date of the ruling. Rulings on administrative fines are enforceable by execution without prior judgement. The Public Procurement Complaints Commission shall notify the Director of Customs when a ruling on an administrative fine is given.

The Complaints Commission is authorized to replace the administrative fine, partially or totally, with a reduced validity of a contract if it is considered that such a decision is in line with the nature of the violation and will result in sufficient deterrence.

Article 101

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.

CHAPTER XVI

Entry into effect, repealed Acts, etc.

Article 102

Adoption of the Directive

This Act involves the adoption of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of

public works contracts, public supply contracts and public service contracts as adopted by the EEA Joint Committee Decision 68/2006 as published on 7 September 2006 in an Annex to the Official Journal of the European Union No. 44/2006.

Article 103

Position of the Administrative Procedures Act with respect to public procurement

The Provisions of Chapter II of the Administrative Procedures Act No 37/1993, on eligibility apply to decisions made in accordance with this Act. In other respects, the provisions of the Administrative Procedures Act do not apply to decisions made according to this Act.

Article 104

General authority permitting the issue of administrative instructions

The Minister of Finance may issue regulations on the detailed implementation of this Act.

Article 105

Applicability of Acts on public procurement

Procurements already advertised before the entry into effect of this Act shall be governed by Act 91/2001 on Public Procurement. Account shall be taken of the official publication of the contract notice, or the estimated receipt of participants of the notice, in the event of procurement procedures that are not publicly published.

Article 106

Applicability of Acts with respect to the activities of the Public Procurement Complaints Commission

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.

The appointment of the current members of the Public Procurement Complaints Commission shall remain valid irrespective of the entry into effect of this Act. The Rules of Procedure of the Public Procurement Complaints Commission, moreover, shall remain in effect until such time as new rules of procedure have been established for the Committee.

Article 107

Entry into effect

This Act shall enter into effect immediately. Concurrently, Act No. 94/2001 on Public Procurement, as amended, shall stand repealed.

The provisions of Sub-paragraphs 2 and 3 of Paragraph 2 of Article 19 shall enter into effect on 1 January 2008.