



## The Public Procurement Act [procurement law]

Date	LOV-1999-07-16-69
Ministry	Industry and Fisheries Ministry
Last changed published	LOV-2013-06-14-32 from 01/01/2014
Commencement	Dept 1999 Ranked. 16
Changes promulgated	01/07/2001
short Title	LOV-1992-11-27-116
	Acquisition Act - offanskl.

---

Ref. EEA Agreement Article 65 and Annex XVI, no. 2 (dir 2004/18), no. 4 (dir 2004/17), no. 4a (Kvedtak 93/327 / EEC), no. 5 (dir 89 / 665), no. 5a (dir 92/13), no. 5b (dir 92/50) and no. 6 (frd. 1182-1171). Cf. Also the WTO Agreement 15 April 1994 on public procurement.

### § 1. *Purpose*

The Act and associated regulations will contribute to increased value in society by ensuring the most efficient use of resources by public procurement based on professionalism and equal treatment. The rules should also contribute to the public acts of great integrity, so that the public has confidence that public procurements are made in a socially beneficial manner.

0 Amended by Act of June 30, 2006 no. 41 (ikr. January 1, 2007 acc. Res. 30 June 2006 no. 762).

### § 2. *Entities covered*

The Act applies to federal, state, and county governments and statutory bodies. The law applies to legal entities that operate within the utility sectors, to the extent required by international obligations and regulations issued pursuant thereto. The law also applies to other legal bodies in cases concerning construction contracts, if the public authorities amounts to more than 50 percent of the contract value.

The King may issue further provisions on which contracting entities covered by the law.

The King may issue further provisions on the application of Svalbard and lay down special rules for the sake of local conditions.

0 Amended by laws July 4, 2003 No.. 83 (ikr. July 25, 2003 acc. Res. July 4, 2003 No.. 879), 30 June 2006 No.. 41 (ikr. January 1, 2007 acc. Res. 30 June 2006 no. 762) .

### § 3. *Procurement covered*

The law applies to procurement of goods, services and construction works undertaken by entities referred to in § 2. This Act does not apply to procurements which may be exempted under the EEA Agreement Article 123.

#### § 4. *Licensees*

Rights under the law is only businesses that are established in accordance with the law of a Member State and having their seat, central administration or principal place of business in that state. The same applies to enterprises granted such rights under the WTO Agreement on Government Procurement or other international agreements that Norway is obliged to follow.

#### § 5. *Basic requirements*

Client shall act in accordance with good business practices, ensure business ethics in its internal operations and ensure that there is no unequal treatment between suppliers.

Procurement shall as far as possible be based on competition.

The principal shall ensure that the interest of predictability, transparency and retrospective scrutiny throughout the procurement process.

Selection of qualified bidders and awarding contracts shall be based on objective and non-discriminatory criteria.

Client shall not

- a. discriminate between suppliers on grounds of nationality,
- b. use standards and technical specifications as a means of impeding competition, or
- c. share a planned procurement in order to prevent the provisions laid down in or pursuant to this Act shall apply.

#### § 6. *Life cycle cost, universal design and environmental*

State, municipal and county governments and statutory bodies shall when planning each procurement have regard to life-cycle costs, design and environmental impact of procurement.

- 0 Amended by the Act 15 June 2001 no. 80 (ikr. July 1, 2001 acc. Res. 15 June 2001 no. 617), 30 June 2006 No. 41 (ikr. January 1, 2007 acc. Res. 30 June 2006 no. 762) .

#### § 7. *Wages and working conditions in public contracts*

The King may by regulations impose state, municipal and county governments and statutory bodies including clauses in the services and construction contracts entered into under this Act, to ensure wages and working conditions that are no worse than those of the current nationwide collective agreement or what is otherwise normal for the place and occupation.

King may by regulation require principals to oversee compliance with the clauses are adhered to, and take action against the supplier at the failure to comply with the clauses.

Labour Inspection supervises that regulations issued pursuant to the first and second paragraphs are complied with. Authority gives instructions and takes the decisions necessary for the implementation of regulations. Work Act § 18-5, § 18-6 first, second, sixth, seventh and eighth paragraphs, and §§ 18-7, 18-8 and 18-10 shall apply *mutatis mutandis*.

PSA within their jurisdiction corresponding supervisory responsibility and authority as mentioned in the second and third paragraphs.

- 0 Added by Act of 21 Dec 2007 no. 121, as amended by Laws May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413), as amended paragraph numbers of § 11a, 14 Dec 2012 No.. 82 ( ikr. July 1, 2013 acc. Res. 14 Dec 2012 No.. 1324), June 14, 2013 no. 32 (ikr. January 1, 2014 acc. Res. 14 June 2013 no. 617).

### **§ 8. *Lawsuits***

An action for violation of this Act or regulations issued pursuant thereto, be brought before a court without conciliation proceedings.

Until a contract is signed, the court may set aside decisions taken during a procurement procedure where the decision is contrary to the provisions of this Act or regulations issued pursuant thereto.

- 0 Amended by laws 14 Dec 2001 no. 98 (ikr. January 1, 2002 acc. Res. 14 Dec 2001 no. 1416), June 30, 2006 no. 41 (ikr. January 1, 2007 acc. Res. 30 June 2006 no. 762) , May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413), as amended paragraph numbers of § 7.

### **§ 9. *Decision Injunction***

For treatment of seeking an interlocutory injunction applies Disputes Act, unless otherwise provided by or pursuant to this Act. Against violations of the provisions in or pursuant to this Act, it can not be decided injunction after the contract is signed.

The King may issue regulations stipulating that principal's permission to enter into a contract suspended by seeking an interlocutory injunction, when the request is submitted within a prescribed period of quarantine.

The King may issue regulations stipulating that contracting authorities may set a deadline for when seeking an interlocutory injunction against the principal's decision to reject or dismiss a request to participate in the competition must be submitted.

- 0 Amended by the Act 30 June 2006 no. 41 (ikr. January 1, 2007 acc. Res. 30 June 2006 no. 762), 17 June 2005 No. 90 (ikr. January 1, 2008 acc. Res. 26 January 2007 No.. 88) as amended by Act 26 January 2007 no. 3, May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413), as amended paragraph numbers of § 8.

### **§ 10. *Duty to the court***

The court shall inform the ministry on issues imposed by § 8, as well as injunctions under § 9.

- 0 Amended by the Act 29 June 2007 no. 62 (ikr. January 1, 2008 acc. Res. 7 Dec 2007 no. 1370), May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413) , amended paragraph numbers of § 9.

### **§ 11. *Compensation***

By violation of this Act or regulations issued pursuant thereto, the plaintiff is entitled to compensation for the loss he has suffered as a result of the breach.

- 0 Amended by Act of May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413), as amended paragraph number from § 10.

### **§ 12. *Advisory Dispute Settlement Body***

The King may establish an advisory body for the settlement of disputes concerning rights and obligations under this Act and regulations made under this.

The King may issue regulations stipulating that employers covered by the Act are required to participate in the process of dispute resolution body.

The King may issue regulations concerning organ, including the provisions on the right of access to case documents.

Freedom of Information Act shall apply to the operations conducted by the Dispute Resolution Body.

0 Added by Act of June 15, 2001 no. 80 (ikr. July 1, 2001 acc. Res. 15 June 2001 no. 617), as amended by Act 30 June 2006 no. 41 (ikr. January 1, 2007 acc. Res. 30 June 2006 No. . 762), 19 May 2006 No.. 16 (ikr. January 1, 2009 acc. Res. 17 October 2008 No.. 1118), May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413 ), as amended paragraph numbers of § 7a.

### **§ 13. *Proceedings to recognize contract ineffective***

The court should recognize a contract ineffective when

- a) contract for procurement of goods, priority services and construction services across the EEA thresholds set out in the regulations, and
- b) Principal either
  - 1. made an illegal direct procurement,
  - 2. awarded a contract within a framework agreement or a dynamic purchasing system in violation of the regulations issued pursuant thereto, or
  - 3. made other violations of regulations issued pursuant thereto that have affected the vendor the opportunity to obtain the contract, and simultaneously has violated provisions on standstill period or suspension and this has deprived the supplier the opportunity to initiate legal action before the contract signing.

Subsection b no. 1 does not apply if the contracting authority has announced that it will be signed a contract and earlier included the contract ten days after the announcement. Subsection b no. 2 does not apply if the contracting authority has notified its decision awarding the contract to suppliers and earlier included the contract after a period of quarantine.

When imperative reasons of public interest makes it necessary to maintain the contract, the court may fail to recognize the contract ineffective. If the consequence of that contract recognized ineffective egregiously could threaten a wider defense or security program which is essential for our security interests, the court can not recognize the contract ineffective.

A contract can be recognized without effect on future contract fulfillment. If the contractual performance can be attributed in substantially the same condition and quantity, the contract may feel no effect from the date of signing the contract.

0 Added by Act of May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413). Ref. Dir 2007/66 that change dir 89/665 and 92/13, see EEA Agreement Annex XVI. 5 and 5a.

### **§ 14. *An action for truncating the contract or to impose a violation charge***

The court shall truncate contract or the imposition of contracting a violation charge when

- a) contract for procurement of goods, priority services and construction services across the EEA thresholds set out in the regulations, and

1. Court fails to recognize a contract ineffective after § 13 subsection, or
  2. principal has undertaken other violations of the rules on waiting period or suspension than those covered by § 13, or
- b) contract for procurement of goods, priority services and construction work under the EEA thresholds set out in regulations or non-priority services, and the client has made an illegal direct procurement.

The court shall impose a fine principal when the contract recognized without effect on future contract fulfillment under § 13.

The court may impose sanctions as mentioned in the first paragraph when

- a) contract for procurement of goods, priority services and construction work under the EEA thresholds set out in regulations or non-priority services, and
- b) Principal either
  1. awarded a contract within a framework agreement or a dynamic purchasing system in violation of the rules laid down in regulations issued pursuant thereto, or
  2. made other violations of regulations issued pursuant thereto that have affected the vendor the opportunity to obtain the contract, and simultaneously has violated provisions on standstill period, and this has deprived the supplier the opportunity to initiate legal action before the contract signing.

Subsection b shall not apply if the contracting authority has announced that it will be signed a contract and earlier included the contract ten days after the announcement. Subsection b no. 1 does not apply if the contracting authority has notified its decision awarding the contract to suppliers and earlier included the contract after a period of quarantine.

When determining sanctions, particular emphasis on seriousness of the violation, the size of the contract, if the principal has made repeated infringements, the ability to restore competition and the deterrent effect. The court may also combine sanctions. Administrative fines may not be higher than 15 percent of the contract value.

0 Added by Act of May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413). Ref. Dir 2007/66 that change dir 89/665 and 92/13, see EEA Agreement Annex XVI. 5 and 5a.

### **§ 15. *Procedural special rules and deadlines by lawsuit pursuant to §§ 13 and 14***

At lawsuits on matters as described in §§ 13 and 14 are obliged to notify the plaintiff principal contractor on the lawsuit. Shall be given notice by sending the copy of the writ.

The court shall, regardless of the parties' allegations, impose sanctions as described in §§ 13 and 14, if the conditions for it are met.

A court ruling is that a contract feels ineffective or that the contract period is truncated, is binding on everyone and be applied in all circumstances in which the question has meaning.

Sanctions according to §§ 13 and 14 can only be imposed when proceedings are instituted within two years from the contract is signed.

If the principal has announced competition results when a contract is awarded without announcement of the competition, can impose sanctions under § 13 first paragraph letter b no. 1 or § 14 subsection b imposed only when proceedings are instituted within 30 days from the announcement.

If the principal in an announced competition has notified the affected vendors on the conclusion of the contract, the sanctions under § 13 first paragraph letter b no. 2 or 3, § 14 first paragraph letter a no. 2 or § 14 subsection imposed only when proceedings are instituted within 30 days from the notification is sent.

- 0 Added by Act of May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413). Ref. Dir 2007/66 that change dir 89/665 and 92/13, see EEA Agreement Annex XVI. 5 and 5a.

## **§ 16. *Regulations and decisions***

The King may issue regulations to supplement and implement the law. The King may give principals the orders necessary to ensure compliance with this Act or regulations issued pursuant thereto. To other entities other than state, municipal and county governments and statutory bodies may still only be given orders as are necessary to fulfill Norway's obligations towards foreign states or international organizations on public procurement. The King may still provide regulations on grounds duty.

The King may issue regulations on compulsory jurisdiction for lawsuits as mentioned in § 8 and requests for interim measures referred to in § 9.

- 0 Amended by the Act 15 June 2001 no. 80 (ikr. July 1, 2001 acc. Res. 15 June 2001 no. 617), 30 June 2006 No.. 41 (ikr. January 1, 2007 acc. Res. 30 June 2006 no. 762) , May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413), as amended paragraph number from § 11.

## **§ 17. *Commencement***

This Act comes into force from the date decided by the King. <sup>1</sup> From the same date the Act of 27 November 1992 no. 116 on public procurement, etc.

- 0 Amended by Act of May 11, 2012 No.. 25 (ikr. July 1, 2012 acc. Res. 11 May 2012 No.. 413), as amended paragraph number from § 12.
- 1 From July 1 2001 meter. Res. June 15, 2001 no. 617.